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SUPREME COURT OF THE UNITED STATES.

No. ~~346.~~ 83

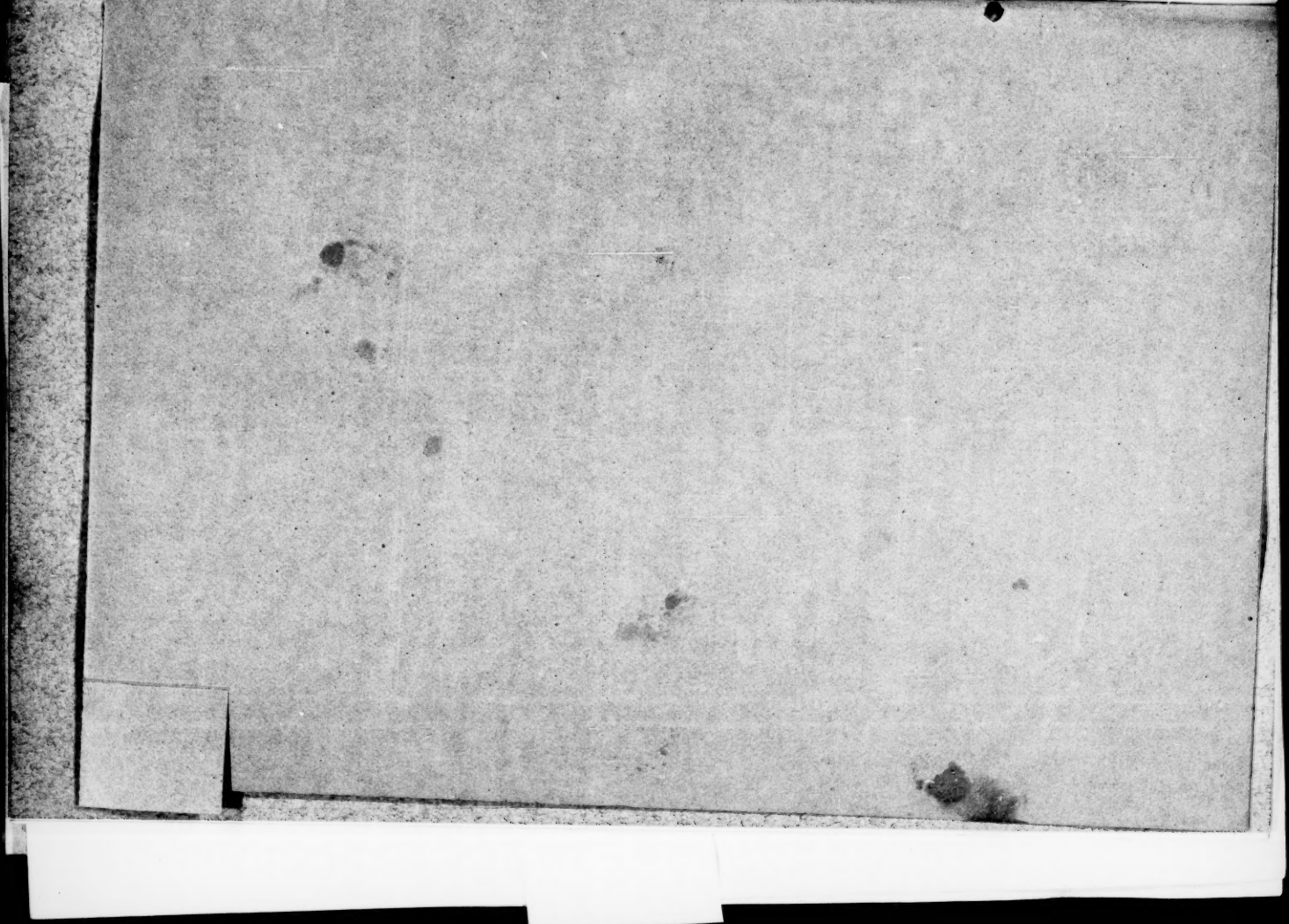
ADELAIDE SNYDER, ALICE STANFORD, HOME STANFORD, WILLIAM T. COLEMAN, MONTGOMERY BLAIR, AND THOMAS EWING, PLAINTIFFS IN ERROR,

vs.

THEODORE SICKLES AND WILLIAM J. LEWIS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED JANUARY 21, 1876.



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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, at the September term, 1875, thereof, between Adelaide Snyder, Alice Stanford, Horace Stanford, Homer Stanford, William T. Coleman, Montgomery Blair, and Thomas Ewing, plaintiffs, and against Theodore Sickles and William J. Lewis, *were* defendants, a manifest error hath happened, to the great damage of the said Adelaide Snyder, Alice Stanford, Horace Stanford, Homer Stanford, William T. Coleman, Montgomery Blair, and Thomas Ewing, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R Waite, Chief Justice of the Supreme Court of the United States, this ninth day of November, in the year of our Lord one thousand eight hundred and seventy-five.

Issued at office in the city of S't Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

[SEAL.] M. M. PRICE,
Clerk Circuit Court United States, Eastern District of Missouri.

Allowed by—

SAMUEL TREAT, *Judge.*

2 *Return to writ.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the *the* record and proceedings in the within-entitled case, with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said circuit court, at office in city of S't Louis, this 23d day of November, A. D. 1875.

M. M. PRICE,
Clerk of said Court,
By A. P. SELBY, *D. C.*

3 The United States of America to Theodore Sickles and William J. Lewis, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D.C., on the sec-

ond Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Missouri, wherein Adelaide Snyder, Alice Stanford, Horace Stanford, Homer Stanford, William T. Coleman, Montgomery Blair, and Thomas Ewing plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel Treat, judge of the circuit court of the United States for the eastern district of Missouri, this ninth day of November, in the year of our Lord one thousand eight hundred and seventy-five.

SAMUEL TREAT,
Judge United States Circuit Court, Eastern District of Missouri.

4 I hereby acknowledge service of the citation in this cause this 3d December, 1875.

THO'S T. GANTT,
For the Defendants and Defendants in Error.

5 THE UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of the United States for the eastern district of Missouri.

Be it remembered that in vacation of the circuit court of the United States, in and for the eastern district of Missouri, there was filed in the office of the clerk of said court, on February 25th, 1875, a certain petition, which said petition is the words and figures following, to wit:

Petition.

In the circuit court of the United States for the eastern district of Missouri.

ADELAIDE SNYDER, ALICE STANFORD, Horace Stanford, Homer Stanford, William T. Coleman, Montgomery Blair, and Thomas Ewing, plaintiffs,
vs.
THEODORE SICKLES AND WILLIAM J. LEWIS, defendants.

Adelaide Snyder, resident of Illinois; Horace Stanford and Homer Stanford, citizens of the State of Illinois; Alice Stanford, residing in the State of Mass., plaintiffs; William T. Coleman, who is a citizen of and resides in the State of California; Montgomery Blair, who is a citizen of and resides in the District of Columbia; Thomas Ewing, who is a citizen of and resides in the State of Ohio, state that defendants are both citizens of and reside in the State of Missouri; that on the
6 seventh day of June, A. D. 1874, plaintiffs were lawfully entitled to the possession of certain premises as tenants in common, being a piece or parcel of land situate, lying, and being in the township of S't Louis, in the county of S't Louis, and known and described

as follows, to wit: United States survey No. 1201, in the name of John F. Perry, assignee of Angelica Chauvin, as surveyed by William H. Cozens, deputy United States surveyor, in 1865 under instructions of the Commissioner of the General Land Office, dated March 25th, 1865, pursuant to the decision of the Secretary of the Interior, dated March 18th, 1865, and as resurveyed in 1872 by said William H. Cozens, deputy United States surveyor, as ordered by the Commissioner of the General Land Office, August . , 1872, in pursuance of the decision of the Secretary of the Interior, dated July . 1872, founded on the opinion of the Attorney-General, dated August 10th, 1872; said tract or parcel of land containing forty (40) arpens in front by forty arpens in depth, bounded on the west by United States survey No. 2036, in the name of Charles Gratiot, under Louis Robert; and defendants, and those under whom they claim, have unfawfully withheld possession of said premises for eight months before this suit was brought.

7 And this further plaintiffs state, that being so entitled to the possession of the above-described premises, claimed as aforesaid, the defendants, on the eighth day of June, A. D. 1874, entered into the said premises and unlawfully withholds from plaintiffs the possession thereof.

Plaintiffs aver that the defendants were in possession of the above-described parcel of land at the time of the commencement of this suit. Plaintiffs ask judgment against the defendants for the possession of said premises and damages for the detention thereof, and for the value of the rents and profits thereof, in the sum of three thousand dollars, and for the monthly value thereof, and for costs.

MONTGOMERY BLAIR,
Att'y for self and others.

Upon said petition was issued the following summons, to wit:

Summons.

UNITED STATES OF AMERICA,
Eastern District of Missouri, set:

In the circuit court of the United States in and for said district.

The President of the United States of America to the marshal of the United States in and for said district, greeting:

You are hereby commanded to summon Theodore Sickles and William J. Lewis, citizens of the State of Missouri, that they be and appear before the honorable circuit court of the United States in and for

8 the eastern district of Missouri, on the first day of the next term thereof, to be holden at the city of S't Louis, in and for said district, on the third Monday of March next, then and there to answer the complaint of Adelaide Snyder, a resident of the State of Illinois; Alice Stanford, residing in the State of Massachusetts; Horace Stanford and Homer Stanford, citizens of the State of Illinois; William T. Coleman, a citizen of the State of California; Montgomery Blair, a citizen of the District of Columbia; and Thomas Ewing, a citizen of the State of Ohio, as set forth in the petition filed in said court on the twenty-fifth day of February, A. D. eighteen hundred and seventy five.

Hereof fail not, and have you then and there this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the twenty-fifth day of February, A. D. eighteen hundred and seventy-five.

Issued at office, in the city of S't Louis, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.]

AUSTIN DRAKE, *Clerk*,
By H. C. GEISBERG, *Deputy*.

And upon said writ was endorsed the following return, to wit:

Return.

UNITED STATES OF AMERICA,
Eastern District of Missouri, set:

Executed this writ by delivering a copy of the summons, 9 together with a copy of the petition, to the within-named Theodore Sickles, at S't Louis, within the eastern district of Missouri, February 27th, 1875, and by leaving a copy of the summons for the within-named W'm J. Lewis, at his usual place of abode at S't Louis, within the eastern district of Missouri, with a white person over the age of fifteen years, and a member of his family, February 27th, 1875.

C. A. NEWCOMB,
United States Marshal, Eastern District of Missouri,
By W'M H. BIERSTADT,
Deputy.

And afterwards, at the March term, 1875, of said circuit court, the following further proceedings were had (of record) in said cause, Tuesday, March 16th, 1875, to wit:

ADELAIDE SNYDER ET AL., PLAINTIFFS,
vs.
THEODORE SICKLES ET AL., DEFENDANTS. } Petition.

This day come the defendants, by their attorney, and file their answer to the petition herein.

Which said answer is in the words and figures following, to wit:

Answer.

In the United States circuit court for the eastern district of Missouri.
March term, 1875.

SNYDER, COLEMAN, STANFORD, EWING, AND others, plaintiffs,
against
WILLIAM J. LEWIS & THEODORE SICKLES, defendants. } No. 501.

10 The said defendants came, and for answer to the petition of the plaintiffs deny that the said plaintiffs were on the seventh day of June, 1874, or at the commencement of this suit, or that they are now, lawfully entitled to the possession of the premises in the petition in this cause described, and of this the defendants put themselves upon the country.

THO'S T. GANTT, *for D.*

And afterwards, at the September term, 1875, of said circuit court, the following further proceedings were had in said cause on the 23rd of September, 1875, to wit:

ADELAIDE SNYDER ET AL., PLAINTIFFS,
vs. } 501.
THEODORE SICKLES ET AL., DEFENDANTS.

Now come the said parties, by their respective attorneys, the plaintiffs by Mess'rs Britton A. Hill and Eugene Tittman, and the defendant by T. T. Gantt, esquire, and this case being regularly called for trial, and both parties being ready, it is ordered that a jury come, and thereupon comes a jury, to wit, J. W. Blakeley, R. M. Blackwood, Baltz Jacobar, J. H. McVeigh, John L. Fifer, J. M. Heady, William Haxby, Matt. Woodruff, Ja's E. Streeter, Ezra Johnson, Samuel T. Adams, and O. D. Line, twelve good and lawful men, duly sworn to well and truly
11 try the issues joined herein, and the evidence not being concluded at the hour of adjournment, it is ordered that further proceedings herein be continued until to-morrow morning.

And afterwards, at said last mentioned regular term of said court, the following further proceedings were had in said cause on the 24th of September, 1875, to wit:

Verdict.

ADELAIDE SNYDER ET AL., PLAINTIFFS,
vs. } 501.
THEODORE SICKLES ET AL., DEFENDANTS.

Now again come the said parties, by their attorneys, and also come said jury, to wit, J. W. Blakeley, R. M. Blackwood, Baltz Jacobar, J. H. McVeigh, John L. Fifer, J. M. Heady, William Haxby, Matt. Woodruff, Ja's E. Streeter, Ezra Johnson, Samuel T. Adams, & O. D. Line, and after further hearing of the evidence and argument of counsel and receiving the charge of the court, the said jury retired for consultation, and afterwards returned into court here the following verdict, to wit:

"We, the jury, find for the defendants.
"JOHN L. FIFER, *Foreman.*"

It is therefore considered by the court that the said plaintiffs take nothing by their writ herein, and that the said defendants go hence without day and have and recover against the said plaintiffs their costs herein expended, and that execution issue therefor.

12 And afterwards, at said last-mentioned regular term of said circuit court, the following further proceedings were had in said cause, on the 25th of September, 1875, to wit:

ADELAIDE SNYDER ET AL., PLAINTIFFS,
vs. } 501.
THEODORE SICKLES ET AL., DEFENDANTS.

Now come the plaintiffs, by their attorneys, and file herein a motion for a new trial.

Which said motion is in the words and figures as follows, to wit:

Mo. for new trial.

In the circuit court of the United States for the eastern district of Missouri. September term, 1875.

ADELAIDE SNYDER ET AL., PLAINTIFF,
vs.
THEODORE SICKLES ET AL., DEFENDANTS.

And now come the plaintiffs, by Britton A. Hill, their attorney, and move the court for a new trial, for the following reasons, to wit:

1st. Because the court gave to the jury an instruction that the plaintiffs were not entitled to recover in this action on the plaintiffs' own testimony, which is error.

2nd. Because the court erred in excluding as evidence the survey by C. E. Solomon of 1874, and the decisions and orders of the Secretary
13 of the Interior, the Commissioner of the General Land Office, and recorder of land titles.

3rd. Because the court erred in excluding from the jury competent and legal evidence offered by the plaintiffs.

4th. Because the court erred in giving judgment for the defendants, when it should have been given for the plaintiffs.

BRITTON A. HILL.
Attorney and of Counsel for Plaintiffs.

Which said motion was by the court overruled.

And afterwards, to wit, on the first day of October, A. D. 1875, at said stated term, the following further proceedings were had in said cause, to wit:

ADELAIDE SNYDER ET AL., PLAINTIFFS,
vs. 501.
THEODORE SICKLES ET AL., DEFENDANTS.

This day come the said parties, by their attorneys, and file stipulation as to amount of property involved.

14 Which said stipulation is in words and figures as follows, to wit:

Stipulation as to amount of property.

ADELAIDE SNYDER ET AL., PLAINTIFFS,
vs.
THEODORE SICKLES ET AL., DEFENDANTS.

In this case it was admitted by the parties, and it was agreed that the record should show, that the property in controversy exceeds in value the sum of five thousand dollars.

THO'S T. GANTT,
For the Defendants.
BRITTON A. HILL,
ROBERT E. COLLINS,
Attorneys for Plaintiffs.

And afterwards, to wit, on the 2d day of October, A. D. 1875, at said stated term of said court, the following further proceedings were had in said cause, to wit:

ADELAIDE SNYDER ET AL., PLAINTIFFS,
vs. } 501.
THEODORE SICKLES ET AL., DEFENDANTS.

Now come the plaintiffs, by their attorneys, and present to the court their bill of exceptions herein, and the same being examined by the court, is signed and allowed, and ordered to be filed and made a part of the record herein.

Said bill of exceptions is in words and figures following, to wit:

15 *Bill of exceptions.*

In the circuit court of the United States for the eastern district of Missouri.

ADELAIDE SNYDER AND OTHERS
vs.
THEODORE SICKLES & WILLIAM J. LEWIS.

Be it remembered that at the trial of this cause it was admitted that defendants were in possession, at the commencement of this suit, of part of the land described in the petition, the part whereof defendants were so in possession being part of the tract covered by a patent issued to Joseph Genereaux, dated 11th April, 1828, on a New Madrid location made in 1818.

The plaintiffs put in evidence an office copy of a concession to Angelica Chauvin, widow Beaulieu, dated 12th May, 1785, and of her petition, dated 6th May, 1785, in the words and figures following:

Petition of Angelica Chauvin.

To Don Francisco Cruzat, lieutenant-colonel of infantry for his Catholic Majesty, captain of the grenadiers of the stationary battalion of Louisiana, lieutenant-governor of the western part of Illinois, and commander-in chief of the said part, &c.:

16 SIR: Angelica Chauvin, widow of defunct Michel Beaulieu, has the honor to state to you that she would wish to settle with her family in this Spanish colony; but as she cannot do it without your permission, she supplicates you to grant her this favor; and inasmuch as her family is numerous, she hopes from you, sir, that you will be pleased to give to her a concession on the river Des Peres, containing forty arpents in front, in ascending or descending said river north and south, by the customary depth of forty arpents on each side of the said river, which concession adjoins on the north side to that of Louis Robert, in descending to the King's domain. The petitioner hopes that you will take into consideration the unhappy situation in which she is now placed, and grant her request. She shall pray Heaven that God may preserve you, prolong your days, and bestow all prosperity on you.

In S't Louis, Illinois, the 6th May, 1785.

Widow BEAULIEU.

17 *Concession to Angelica Chauvin.*

Having seen the statement in the foregoing memorial, presented by Angelica Chauvin, widow of the late Michel Beaulieu, citizen of this post of S't Louis, dated the 6th of May, in this current year, I have

conceded to her, in fee-simple, for herself and her heirs, and others that might represent her rights, forty arpents of land in front by forty in depth, lengthwise the river called Des Peres, from north to south, bounded on one side by the lands of Louis Robert, and on the other by the King's domain, under the condition to improve the same and cultivate it within one year from this date; and that, on the contrary, the said forty arpents shall be reunited to the King's domain, the land remaining liable to the public and other charges which His Majesty might be pleased to impose thereon.

Given in S't Louis, of Illinois, the 12th May, 1785.

(Signed) FRANCISCO CRUZAT.

Also, a certified copy of the claim of John F. Perry, assignee of Angelica Chauvin, filed with the recorder of the land titles February 27, 1806, including copy of deed from Chauvin to Perry, dated 1st November, 1805, and the petition and concession aforesaid; and also a copy of the proceedings of the board of commissioners on said claim, ending with and including certificate of confirmation, No. 1201, in the words and figures following:

18

Claim of Jno. F. Perry, assignee.

A notice of titles and claims of land, the property of Jean François Perry, esq., presented to the register or recorder of land titles for the district of Louisiana, the 27th day of February, 1806.

Jean François Perry, esq., claims a tract of land as assignee of Veuve Beaulieu, situated on the river Des Peres, by virtue of a concession made by François Cruzat, bearing date the 6th day of May, 1785, containing the quantity of 1,600 arpens, and by virtue that the tract of land was duly improved and cultivated according to the conditions of the grant. Concession No. 1, platt No. 2.

The said Jean François Perry, esq., also claims one other tract of land, situate on the river Aux Boeuf, by virtue of a concession bearing date the 17th of July, 1798, made by Don Zenon Trudeau, containing the quantity of 3,000 arpens. Concession No. 3, platt No. 4, for Jean François Perry.

19

(Signed) I. DARNEILLE.

Deed to John F. Perry.

Know all men by these presents that I, the within named Angelica Chauvin, widow Beaulieu, for and in consideration of $160, to me in hand paid by Jean François Perry, esq., of the county of S't Clair, in the Indiana Territory, the receipt whereof I do hereby acknowledge, have granted, bargained, sold, aliened, and confirmed, and by these presents do grant, bargain, sell, alien, and confirm unto the said Jean François Perry, his heirs and assigns, forever, all and singular the within tract of land, granted me by the within concession, and all my estate, right, title, and interest of, in, and to the same.

To have and to hold the said tract of land to the said Jean François Perry, his heirs and assigns, to his and their own proper use and behoof, forever; and I do hereby, for me and my heirs, warrant and forever defend the said tract of land to the said Jean François Perry and his heirs, against me and my heirs, and against all persons claiming under me or them.

20

In witness whereof I have hereunto set my hand and seal the 1st day November, 1805.

VEUVE BEAULIEU. [SEAL.]

Sealed and delivered in presence of—
JOHN HAY.
JOHN RICE JONES.

I acknowledge to have received the full consideration money within *within* mentioned.

VEUVE BEAULIEU.

Witness:
JOHN HAY.
JOHN RICE JONES.

OFFICE OF THE U. S. RECORDER OF LAND-TITLES,
St Louis, December 28, 1874.

This is to certify that the foregoing notice, concession, and deed have been correctly copied from page 93 of record book marked "B," which book is up to this day on file in this office.

STILLMAN O. FISH,
Recorder.

21 *Proceedings of the board of commissioners, &c.*

AUGUST 23RD, 1806.

The board met agreeably to adjournment.

Present, the honorable Clement B. Penrose and James L. Donaldson, esquire.

John F. Perry, assignee of Angelica Chauvin, widow Beaulieu, claiming 40 by 40 arpens of land situate on the river Des Peres, district aforesaid, produces a duly-registered concession from François Cruzat, dated the 12th May, 1785.

Pierre Beguet, being duly sworn, says that the said tract of land was settled about 18 years ago by the said widow Beaulieu; that he assisted her in moving corn which had been raised on the same.

Charles Gratiot, being also duly sworn, says that the aforesaid widow Beaulieu settled the said tract of land in the year 1785, and raised a crop of corn in that year.

Nicholas Beaugenoux, being also duly sworn, says that claimant settled the said tract of land in the year of the flood commonly known amongst the inhabitants by the highest flood; that she had then a cabin on the same, where he, the witness, saw her children and slaves.

Vincent Boni, being also duly sworn, says that the said tract
22 of land was actually settled and cultivated about the '86; that the Indians being then very troublesome, and killing the whites whenever they met them, she, the said widow, was obliged to abandon the same.

The board reject this claim, and observe that it appears from the records in their possession that the aforesaid concession had been revoked, and a new one for said land granted to one Charles Tayon.

Adjourned to Monday, the 25th instant, at 9 o'clock a. m.

Confirmation certificate 1201.

TUESDAY, *August 20th*, 1811.

Board met.

Present, Clement B. Penrose and Frederick Bates, commissioners.

Jean F. Perry, assignee of Angelica Chauvin, claiming 1,600 arpens of land. (See book No. 1, page 487.) The board confirm to Jean F. Perry one thousand six hundred arpens of land, and order that the same be surveyed conformable to his possession, survey at expense of claimant.

Board adjourned till to-morrow, eight o'clock a. m.

(Signed) CLEMENT B. PENRO'E.
FREDERICK BATES.

23 OFFICE OF THE U. S. RECORDER OF LAND TITLES,
St Louis, Sept. 21st, 1875.

I hereby certify that the foregoing is a true and complete copy from minutes of old board in reference to claim of John F. Perry, assignee of Angelica Chauvin, for 1,600 arpens of land. Book 1, pp. 486, '7, '8, inclusive, and Book 5, pp. 322–324, inclusive, which books are still on file in this office up to present date.

STILLMAN O. FISH,
U. S. Recorder.

Certificate No. 1201.

LOUISIANA:

Commissioner's certificate, No. 1201.

AUGUST 20TH, 1811.

We, the undersigned, commissioners ascertaining and adjusting the titles and claims to lands in the Territory of Louisiana, have decided that John F. Perry, claiming under Angelica Chauvin, original claimant, is entitled to a patent under the provisions of the 4th section of an act of the Congress of the United States, entitled "An act respecting claims to land in the Territories of Orleans and Louisiana," passed
24 the third day of March, one thousand eight hundred and seven, for sixteen hundred arpens of land situate in the district of Saint Louis, on river Des Peres, and order that the same be surveyed conformably to the possession.

By virtue of a concession or order of survey from François Cruzat, lieutenant-governor.

(Signed) CLEMENT B. PENROSE.
(Do.) FREDERICK BATES.

OFFICE OF THE U. S. RECORDER OF LAND TITLES,
St Louis, Sept. 21st, 1875.

I hereby certify that the above commissioner's certificate, No. 1201, dated August 20th, 1811, in favor of John F. Perry, assignee of Angelica Chauvin, is a true and complete copy as found in a book marked "Commissioners' Certificate," numbering from 1201 to 1342, which book is still preserved on file in this office up to present date.

STILLMAN O. FISH,
U. S. Recorder.

Also, the act of Congress dated 6th June, 1874, entitled "An act
25 obviating the necessity of issuing patents for certain private land-claims in the State of Missouri, and for other purposes," as follows:

Act of Congress of June 6, 1874.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all of the right, title, and interest of the United States in and to all of the lands in the State of Missouri which have at any time heretofore been confirmed to any person or persons by an act of Congress, or by any officer or officers, or board or boards of commissioners, acting under and by authority of any act of Congress, shall be, and the same are hereby, granted, released, and relinquished by the United States in fee simple to the respective owners of the equitable titles thereto, and to their respective heirs and assigns, forever, as fully and as completely, in every respect whatever, as could be done by patents issued therefor according to law.

SECT. 2. That nothing contained in the first section of this act shall in any manner abridge, divest, impair, injure, or prejudice any
26 valid right, title, or interest of any person or persons in or to any portion or part of the lands mentioned in said first section, and this act shall in nowise affect any lands or lots heretofore relinquished to the United States.

SEC. 3. That whenever the Secretary of the Interior shall be of the opinion that the public interest no longer requires the continuance of the office of recorder of land titles in Missouri he may close and discontinue the same; and all of the records, maps, plats, field-notes, books, papers, and everything else concerning, pertaining, or belonging to said office of recorder shall be delivered to the State of Missouri; provided, however, that said State shall provide by law for the reception and safe keeping of said records, maps, plats, field notes, books, papers, and everything else belonging to said office of recorder as public records, and for the allowance of free access to the same by the authorities of the United States, for the purpose of taking ex-
27 tracts therefrom or making copies thereof, without charge of any kind; and provided, further, that, when said office of recorder shall be closed and discontinued as aforesaid, the Commissioner of the General Land Office shall forever thereafter possess and exercise all of the powers and authority and perform all the duties of the said recorder.

Approved June 6, 1874.

Plaintiffs then gave evidence tending to prove that plaintiff had all the title of Jno. F. Perry to the said confirmation, and for the purpose of showing where said confirmation ought to be located.

Plaintiff offered in evidence an office copy of a grant to Louis Robert, dated 6th April, 1779; also, an office-copy of a grant to Alexis Louise, dated 8 June, 1779; also, office copy of petition of Charles Gratiot to Zenon Tradeau, dated 16th February, 1797; the order thereon of Trudeau, dated February 17th, 1797, and the return made thereof by Antonio Soulard, dated 20th February, 1797, and the complete grant made by Manuel Gaysio de Lemos, dated New Orleans, 2d April, 1798,
28 which two grants, with the petition of Charles Gratiot, the office-copies of the deeds of Beaugenon and Laurin to Charles Gratiot, accompanying his petition. The order of Trudeau, the survey by Soulard, and the complete grant by De Lemas are in the words and figures following:

Grant to Louis Robert.

We, Don Fernando de Leyba, captain of the regiment of infantry of Louisiana, commander-in-chief and lieutenant-governor of the western

part of Illinois, in consequence of the demand which has been made to us by Louis Robert, inhabitant of this part of S't Louis, in his petition of this day, stating that he sees the impossibility of raising cattle in this post on account of the bad condition of the commons of the inhabitants; that the wealth of a cultivator is only found in the cattle which he raises, and which gives him the facility of cultivating the soil, and to furnish provisions to the King when His Majesty's service requires it; the petitioner has cast his eyes upon a portion of land
29 which has never been demanded nor inhabited by anybody, and which is situated at the end of the land of the Grand Prairie of this village, and adjoins on one side to the river Des Peres, where the petitioner wishes to form an establishment to raise thereon divers kind of cattle, and at the same time to cultivate the land and erect the buildings which he shall need; therefore, that we would be pleased to grant to him the title to a concession of seven arpents of land in width by forty arpents in length, which is the customary depth; which land adjoins by a straight line to the river Des Peres, and by taking its width on the north side of the King's domain; on one end to the lands of the Grand Prairie, and on the other end to the King's domain; that defence be made to all persons to encroach upon said land, nor put cattle within the enclosures made by the petitioner. The whole being examined, and considering that this establishment can be but advantageous to the good of the service and of the public, we have conceded, and we do concede, to the said Louis Robert the title to the property for himself, or his assigns, of the seven arpents of land in
30 width by forty arpents in length, such as they are described in his petition, so that himself and his heirs may enjoy the same forever; and we forbid all persons to trouble him in the said concession, nor to put cattle within his enclosures, under the conditions that he shall improve the said land within one year from this day; and, moreover, that the same shall remain liable to the public, and other charges which His Majesty may be pleased to impose thereon, under the penalty of being reunited to the King's domain.

Given in S't Louis, the 6th April, 1779.

FERNANDO DE LEYBA.

Grant to Alexis Loise.

Don Fernando de Leyba, captain of the regiment of Louisiana, commander-in-chief, and lieutenant governor of the western part of Illinois, upon the demand which has been made to us by Alexis Loise, inhabitant of this post, in his petition of the 7th instant, stating that he would wish to settle in the prairie vulgarly called Prairie of the River, to fix there his establishment and cultivate the soil; that you will be pleased,
31 sir, to grant to him a tract of land of three arpents in length adjoining on the south to that of Robert, and on the other side, i. e., north, to the King's domain. He shall continue his prayers to Heaven for your prosperity.

S't Louis, the 7th June, 1779.

A' X for the mark of Alexis Loise.

Whereupon, willing to favor the petitioner in his view of settlement, we have conceded, and do concede to him, for himself, his heirs or assigns, in fee simple, the three arpents of land in width, by the customary depth of forty arpents, bounded on the south side by Robert, and on the other side, i. e., north, by the King's domain, the two ends running east

and west, in order that the said Loise, or his assigns, may enjoy the same as a thing belonging to him in full property, under the conditions to settle the same within a year and one day from the date of these presents, and that it shall remain subject to the public and other charges which His Majesty may be pleased to impose thereon.

Given in S't Louis, the 8th June, 1779.

FERNANDO DE LEYBA.

32 *Petition of Charles Gratiot to Zeno Trudeau.*

To Don Zeno Trudeau, lieutenant-colonel and lieutenant-governor of the western part of Illinois, &c:

SIR: The undersigned has the honor to represent to you that, having purchased two tracts of land situate on the river Des Peres, one having seven arpents and the other three arpents in width, by forty in length, making together four hundred arpents of land in superficies, which the petitioner acquired of Baptiste Laurens and Fife Beaujenon, both inhabitants and residents of this town; which two tracts adjoin each other, fronting on the south the lands of the petitioner, bounded east by the land of Charles Tazon, west by that of J. Marie Papin, and north by the King's domain; which being considered, sir, I ask that you will be pleased to authorize the petitioner to have said land bounded, chained, and surveyed by the King's surveyor, in order that a process verbal thereof be made and delivered to the petitioner, to serve him
33 and be available in case of need; it is what he expects from your justice.

In S't Louis, the 16th of February, 1797.

(Signed) CHARLES GRATIOT.

Order of Zeno Trudeau for survey.

S'T LOUIS, 17*th February*, 1797.

The surveyor of this jurisdiction, Don Antoine Soulard, shall on this day survey the two above tracts of land, which belong to M'r Charles Gratiot, and he shall write here below his certificate thereof, and deliver it to said Gratiot, which, conjointly with the titles of concession existing in the archives of this command, shall secure the same to him forever.

(Signed) ZENO TRUDEAU,

Survey by Antoine Soulard.

We, the undersigned, a surveyor appointed by government, do certify to all whom it may concern, that on this day, 18th of February, 1797, in virtue of the order of the lieutenant governor, dated the 17th of this current month and year, we went to the land of M'r Charles Gratiot to execute the survey of a tract of ten arpents in front, by forty in
34 depth, or four hundred arpen's in superficies, which survey was made in the presence of the owner and his adjoining neighbors, with the perch of the city of Paris, of eighteen royal feet in length, according to the usages and customs of this colony, which land is situated at about six miles nearly west of this town, and is bounded as follows, to wit: On the north and east by vacant land belonging to His Majesty's domain; on the south by a tract of land belonging to the interested party; and on the west by that of M'r Joseph Papin; and in order that he may prove it, we have delivered the present certificate, with the fig-

urative plat which accompanies it, on which we have set down the natural and artificial limits.

In S't Louis, of Illinois, the 20th of the month of February, 1797.

(Signed) ANTOINE SOULARD,
Surveyor.

Grant by the Governor-General to Cha's Gratiot.

We, Don Manuel Gayoso de Lemos, brigadier of the royal armies,
35 governor-general, vice-royal patron of the provinces of Louisiana and Western Florida, and inspector of their veteran troops and militia, having seen the foregoing operations performed by the surveyor-general, Don Antoine Soulard, relative to the possession which he has given to Don Charles Gratiot, of four hundred arpents of land in superficies, situated at about six miles west of the town of S't Louis, bounded north and east by the vacant lands belonging to the King's domain, south by a tract of the interested party, and west by that of Joseph Papin, as shown by the foregoing figurative plat; and ascertaining that the same is in conformity with the order of survey, and with the concession of the neighbor, to whom it causes no prejudice whatever, and who has not objected thereto, but, on the contrary, given his assent, as is proven by his presence at the said operations, by which he approved the same, as we do ourselves; and using the power which the King has granted us, we do grant, in his royal name, to the aforesaid
36 Charles Gratiot, the said four hundred arpents, in order that he may enjoy the same and dispose thereof, as his own property, in conformity with the said operations, and under conditions provided for in the regulations upon the matter; and we give these presents, signed with our hands, sealed with the seals of our arms, and countersigned by the undersigned, secretary for His Majesty of this government, in New Orleans, on the 2d of April, 1798.

MANUEL GAYOSO DE LEMOS. [SEAL.]

Deed of Fifi Beaugenon to Ch. Gratiot.

Before us, Zeno Trudeau, lieutenant-colonel by brevet, and lieutenant governor of the western part of Illinois, for want of a notary public, was present Fifi Beaujenon, inhabitant and resident of this village of S't Louis, who has acknowledge' and confessed to have sold, ceded, quitted, transferred, and left by these presents, from now and forever, and promise to warrant from all troubles, debts, mortgages, gifts, dowers, ejections, substitutions, alienation, and other impediments whatever, unto Charles
37 Gratiot, here present and accepting purchaser, for himself, his heirs or assigns hereafter, a tract of land of three arpents in width by forty in depth, situated on the river Des Peres, adjoining to the south to the lands of the purchaser; on the east, to the land which said purchaser has of Baptiste Laurens; on the west, to that of M'r J. Marie Papin; and on the north, to the King's domain, without any reserve or detaining on the part of said Beaujenon, to whom it belongs by purchase from Alexis Loise, without any charge, rent, or tax to this day, in order that the said Charles Gratiot, his heirs and assigns, may enjoy the same and dispose of it as a thing be onging to him, the possession to begin from this day; the present sale thus executed for the sum of ninety livres, which the said Fifi Beaujenon acknowledges to have received of the said Charles Gratiot, and for which he gives discharge to the said purchaser; by means of which the said Fifi Beaujenon has left

and divested himself of the said land, in behalf and for the ben-
38 efit of said Charles Gratiot, his heirs or assigns, it being his will that the said purchaser take the said land, and be put in possession thereof as it is here above mentioned, by whom it may appertain. Then they have covenanted and agreed upon, promising, &c., binding, &c., renouncing, &c.

Done and executed in our government hall in the year 1797, the 15th day of February, in the presence of Mess'rs Antoine Soulard and Hyacinthe S't Cyr, assisting witnesses, who have signed with the contracting parties and us, lieutenant-governor. Fifi Beaujenon having declared not to know how to sign, has made his customary mark, as well as M'r Hyacinthe S't Cyr.

his
FIFI + BEAUJENON.
mark.

CHARLES GRATIOT.
ZENO TRUDEAU.

ANTONIO SOULARD.

his
HYACINTHE + S'T CYR.
mark.

Deed from Baptiste Laurens to Charles Gratiot.

Before me, Don Zeno Trudeau, lieutenant-colonel and lieutenant-governor of the western part of Illinois, for want of a notary public, was present Baptiste Laurens, residing in this village of S't Louis, who have acknowledge' and confessed to have sold, ceded, quitted,
39 transferred, and left, by these presents, from now and forever, and promise to warrant from all troubles, debts, mortgages, gifts, dowers, ejections, substitutions, alienations, and other impediments whatever, unto M'r Charles Gratiot, here present, and accepting purchaser, for himself, his heirs, or his assigns, hereafter, a tract of land situated on the river Des Peres, of seven arpents in width by forty in depth, fronting on the south by the lands of the said M'r Charles Gratiot; east, the land of M'r Charles Tayon; west, by that of Fifi Beaujenon; and north, the King's domain; of which said land the said Baptiste Laurens has divested himself forever in favor of the said Charles Gratiot, his heirs or assigns, and he warrants the same free of all rights, charges, or taxes, and as having acquired it for one Louis Robert, in order that the said Charles Gratiot may enjoy the same and dispose thereof as a thing belonging to him, the possession to begin from this day. This sale is thus made for the sum of two hundred francs, which the said Baptiste Laurens acknowledges to have received of the
40 said Charles Gratiot, and for which he gives discharge to the said purchase, by means of which the said Baptiste Laurens has left and divested himself of the aforesaid land, in behalf and for the benefit of the said Charles Gratiot, his heirs and assigns, it being his will that the said purchase' take the land and be put in possession thereof. Then it has been covenanted and agreed upon, promising, &c., binding themselves, &c., renouncing, &c.

Done and executed in the village of S't Louis, in our government hall, in the year 1797, and on the 8th February, in the presence of Mess'rs Andre Manuel Rogne and Timothy Drake, assisting witnesses, who, with the said parties, have signed these presents with us, lieutenant-

governor. And the said Baptiste Laurens, having declared not to know how to write, made his mark of a cross.

his
BAPTISTE + LAURENS.
mark.
CHARLES GRATIOT.
ZENO TRUDEAU.

MANUEL ANDRE ROGNE.
TIMOTHY DRAKE.

41 To the admission of these papers the defendants objected, as being incompetent and irrelevant to the issue joined. The court excluded the said papers, and plaintiffs excepted at the time thereto.

Plaintiffs then put in evidence certified copies of a letter from the Secretary of the Interior, dated the 10th March, 1865; letter from the Commissioner to W. H. Cozens, dated 24th March, 1865; and letter from T. S. Nelson to W. H. Cozens, dated 29th March, 1865; in the words and figures following:

Letter from the Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., March 18, 1865.

SIR: A grant of land was made to Madame Chauvin, which was not forfeited, but subsequently confirmed, and it remained but to survey and patent it to complete title. A survey was made along one side of Robert's grant and patent requested upon that survey, but the
42 General Land Office found that the survey was upon land which had been granted and patented to Madame Pappin. Assuming, as department must, that there was no error in the location of the grant to Pappin and Robert, it was eminently proper to call the attention of the claimants under the Chauvin grant to the conflict between them and the Pappin title. The claimants, seeing this, had a right to hesitate about the location and to refuse the patent. In their action in this respect there has been no conflict of opinion between the General Land Office and the claimants. The presumption of law is, that the grant to Madame Chauvin was valid, and not upon the land which had been granted to another; and, further, that the land granted to her was not, without forfeiture on his part, given to another. And as the land upon which the survey was made was afterwards granted to another, and which grant the department by its action in granting the patent
43 to Pappin is not at liberty to dispute, it appears to me that the General Land Office is bound, upon the demand of the claimants, to cause another survey to be made, and to make it whenever they may request, so that it is bounded on the one side by the land of Louis Robert, which is one of the distinctive calls in the grant. Attention should be given to calls upon the river Des Pere, as far as practicable, enabling it to be laid by the side of Robert's grant, and when surveyed and patented according to the will of the claimants the duty and authority of the General Land Office will be at an end.

If the claimant causes the survey to be made and patented upon land not granted to Chauvin, it will be his error and misfortune.

In the case of Maguire vs. Tyler, 1st Black, 196, it was claimed that though repeated surveys had been made and approved, and a patent issued, but not accepted, the case stood as it existed in 1810, when the

board of commissioners confirmed the grant as valid. Upon the authority of that case this department ordered a survey as desired
44 by the claimant in accordance with the grant as it was found here. The case in hand is simply this: Proceedings are pending for perfecting the title in the proprietors of the Chauvin grant. A survey preliminary to the patent has been made, which was believed by the Commissioner of the General Land Office to be erroneous, and of which error the claimant is now entirely satisfied. No one doubts that the party is entitled to a survey and a patent. If the latter should be offered upon the present survey, we are certain it would be refused. We have the authority of the Supreme Court that the case would then be in the precise condition it was at the date of the confirmation of the grant. Since the decision of the department in October, 1853, which is respected and would not be hastily interfered with, we have the act of June 2, 1862, and the decision of the Supreme Court, both of which, in my judgment, furnish aid is disposing of this case.

45 I am of the opinion that the party is entitled to a further survey of the Chauvin grant, and that because of the uncertainty of its proper location; and by the authority of the act of Congress above referred to the party may, in accordance with the views before expressed, designate the land upon which he will have the survey. If it shall be found upon lands bounded on one side by the lands which the department has determined belonged to Louis Robert, and corresponds with the other calls of the grant, a patent should be issued upon the demand of the party. The duty of the department will then be performed, and if the title to the patented lands shall be found to be in conflict with others, their remedy, if any, will be in court; and if the making of the contemplated survey shall cause a suit in court to settle conflicting titles it is of no just concern to the department, nor should it prevent its action, for courts were instituted for just such purposes.

46 The party desiring the survey has suggested the name of William H. Cozzens, of S't Louis, as a competent person to make it.

The papers in the case transmitted with your communication of the 28th ultimo, are herewith returned.

I am, sir, very respectfully, your ob't servant,

(Signed) J. P. USHER, *Secretary.*

TO THE COMMISSIONER OF THE GENERAL LAND OFFICE.

Certificate of Recorder.

OFFICE OF THE U. S. RECORDER OF LAND-TITLES,
Saint Louis, January 14th, 1875.

This is to certify that the foregoing is a true and correct copy of the letter from J. P. Usher, Secretary of the Interior, to the Commissioner of the General Land Office, and which is preserved and on file in this office up to present date.

STILLMAN O. FISH,
Recorder.

47 *Letters from the Acting Commissioner and the recorder of land-titles.*

OFFICE U. S. RECORDER OF LAND-TITLES,
S't Louis, March 29, 1865.

WILLIAM H. COZZENS, Esq., *Surveyor:*

SIR: I have received from the Commissioner of the General Land Office a communication as follows:

"GENERAL LAND OFFICE,
"*March* 24, 1865.

"THOMAS S. NELSON, Esq'r,
"*Recorder Land-Titles, S't Louis, Mo.:*

"SIR: I herewith enclose you a copy of a decision of the Secretary of the Interior in relation to the survey of the Chauvin claim. M'r William H. Cozzens has been designated to carry this decision into effect and execute the new survey required. You will therefore make known this decision to all interested, and require of M'r Cozzens the proper oath and bond, say $1,000, before entering upon the duties of the office, and when the survey is thus made you will forward the same to this office.

"Very respectfully, yours,

"JOS. S. WILSON,
"*Acting Commissioner.*"

48 You will please, therefore, comply with the foregoing requisitions, when the decision or a certified copy thereof will be furnished you from this office as your guide in making the survey.

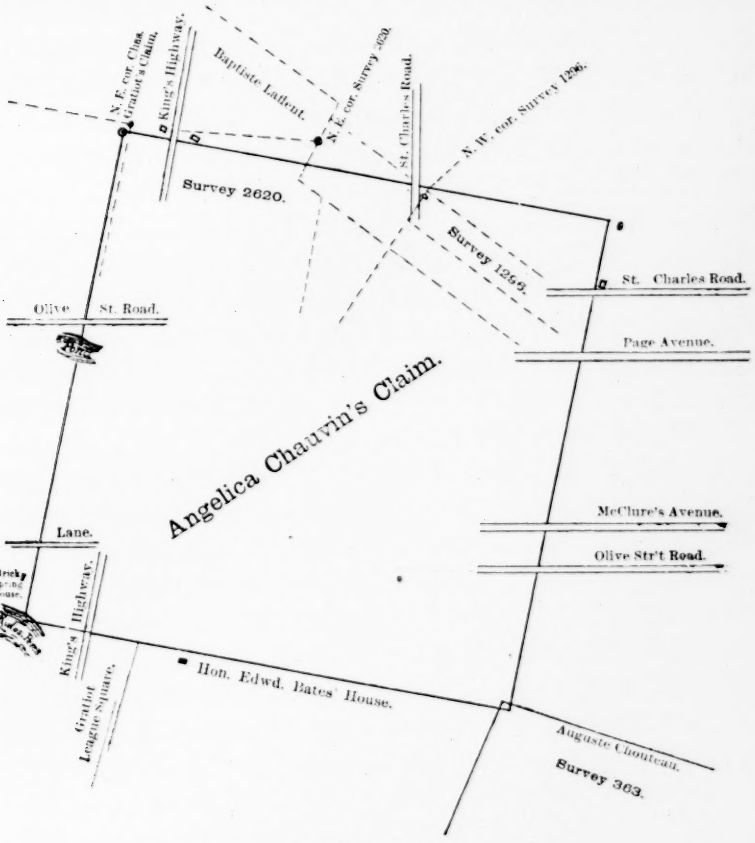
I am, sir, very respectfully your obedient servant,

THOMAS S. NELSON,
U. S. Recorder of Land-Titles for Mo.

49 *Copy of survey of W. H. Cozens.*

Plaintiffs then offered in evidence a paper purporting to be a copy of a survey made by W. H. Cozens, under the aforegoing instructions, in the words and figures following, which survey was disapproved by the Secretary of the Interior:

Protracted from the field-notes of W. H. Cozens, dep. surveyor, dated S't Louis, Mo., Apr. 10, 1865.—N. Du Bois, draughtsman, Gen'l Land Office.



50 *Survey No.* 1291.

In the name of Jean F. Perry, under Angelica Chauvin, being a grant for forty arpens square, equal to sixteen hundred superficial arpens of land, and situated in township forty-five north of the base-line, and range seven, east of the fifth principal meridian, and in S't Louis County, Missouri, surveyed under authority of Thomas S. Nelson, esq'r, as per letter dated March 29th, 1865, and in conformity with instructions from Joseph S. Wilson, esq'r, Acting Commissioner of the General Land Office, dated March 24th, 1865, and according to the decision of the Secretary of the Interior, dated March 18th, 1865. The survey was executed on the 5th, 6th, 7th, and 8th days of April, 1865.

Compass adjusted to a variation of 7° 30′ east. Commenced the survey at the southeast corner of survey No. 2036, in the name of Charles Gratiot, for 400 arpens, embracing the grant of 7 by 40 arpens to Louis

Robert, and the grant of 3 by 40 arpens to Alexis Loise. This point is also in the northern line of survey No. 2037, in the name of Charles Gratiot, of 84 arpens in front by 80 arpens in depth, and is also in the middle of the channel of the river Des Peres; thence—

	N. 9° 30 E.		With the eastern line of the Louis Robert grant, be-being also the eastern line of Charles Gratiot's survey No. 2036, of 400 arpens, and the western boundary line of the said Angelica Chauvin claim, the northern bank of river Des Peres bearing S. E., a stone.
51			
Ch's	l'ks.		
0	50		
1	50		
8	90		
			A point in line with the south side of a brick spring-house, 70 links to the westward.
18	20		
65	00		A stone on north side of a lane bearing N. 83° W., & S. 83° E., south edge of a pond.
71	00		North edge of a pond.
72	23		Set a stone under a board fence in south side of the Olive street road.
72	70		Centre line of said road, N. 83° W., & S. 83 E.
73	18		Set a stone on north side of road, and under a fence.
115	53		An old set stone in a pond.
116	66⅔		Established the northwest corner of the Chauvin claim from which a stone at the N. E. corner of Charles Gratiot's survey No. 2036 for 400 arpens bears N. 7½° E., 254 links distant.
			Note these three corners are now covered with water.
			Thence—
S. 82° 30 E.			With the northern boundary-line of the Chauvin claim of 1,600 arpens.
Ch's	l'ks		
9	61		A point in line with the eastern front of Ricklicke's brick house, which is 123½ l'ks to the northward.
Ch's	lk's		
11	31½		Set a stone under the fence on the west side of the King's highway, 60 feet wide.
11	75½		Intersect the centre line of said road bearing S. 7½° W. and N. 7½° E.
52	12	13	An old well.
	12	21½	Set a stone under a fence on the east side of the King's highway, a point in line with western front of Charles Bobb's brick house, & 43 l'ks to the northward of line.
13	28		
45	50		Intersect the eastern line of survey No. 2620, a New Madrid location, in the name of Francis Deslisle, at a point S. 28° 45 W., 2 ch's 66 l'ks from a stone at the N. E. corner thereof in this part of the survey.
70	28		Set a stone on the south side of the S't Charles road in-
71	52		tersected the centre of the S't Charles road on the south line of survey No. 1253, in the name of the widow and representatives of Antoine Marvin under Alexis Picard, at a point N. 61° W., 1 chain 95¾ l'ks distant from the stone at the N. W. corner of survey No. 1296, in the name of Joseph Mainville dit Deschene.
73	63		Intersected the western line of the Grand Prairie Common field lands; prolonged northwardly at a point N. 28° 45 E. 77 links distant from the northwest corner survey No. 1296, in the name of Joseph Mainville dit Deschene.

116 66⅔	The northeast corner of Chauvin claim, from which the stone at the intersection of the east line of Goode avenue with the north line of a cross street in Robert Wash's addition bears S. 84° 30 W. 2 ch's 62¼ l'ks, and a stone at the intersection of the east line of said Goode avenue with the south line of a cross street in Wash's addition, bears N. 9° 30′ W. 3 ch's 52 l'ks distant.
53	
	Thence—
S. 7° 30′ W.	With the eastern line of the Chauvin claim.
5 chains	Set a stone under a board fence.
16 ch's 5½ l'ks.	The north side of a brick house, at a point 33 l'ks west of the N. E. corner thereof.
17 57	Set a stone on the north side of the S't Charles road.
18 55	Set a stone on the south side of the road.
32° 00	Set a stone on north side of Page avenue.
33 67	Set a stone on the south side of Page avenue, and in the southern line of survey No. 3301 in the name of Rene Kurcerau.
38 94	The south line of the Chancellier tract.
75 47	Set a stone on the north edge of McClure avenue.
77 12	Set a stone on the south edge of McClure avenue.
83 40	Set a stone on the north line of Olive street road.
84 38	Set a stone on the south line of Olive street road.
109° 85	Set a stone.
115° 78	Intersected the north line of survey No. 363 in the name Auguste Chouteau, under the Laclede ligueste, commonly known as the Chouteau Mill tract, at a point 132 l'ks S. 75° E. from the stone at the N. W. corner thereof.
116 ch's 66⅔ l'ks	Set a stone at the southeast corner of the claim of Angelica Chauvin from which the stone at the northwest corner of the Chouteau Mill tract bears N. 43° 30 W. 1 ch. 68 l'ks distant, and the southwest corner of a
54	brick house bears N. 19° 45 E. 3 ch's 38 links distant.
	Thence—
N. 82° 30′ W.	With the southern line of the said Chauvin claim.
1 ch. 46⅔ l'ks	Intersect the western line of the Chouteau Mill tract at a point S. 15° W. 1 ch. 06⅔ links distant from the stone at the northwest corner thereof.
45 43	Set a stone.
81 77	A point in line with the west side of the hon'able Edward Bates' brick house and 1 ch. 04 l'ks distant northwardly therefrom.
9 47	The stone at the northeast corner of the Gratiot league-square survey No. 2037.
105 00	A stone in the centre line of the King's highway, so called, being a county road bearing N. 7½ E.
116 00	Set a stone on the east bank of the River des Peres bearing south'd.
116 66⅔	The southwest corner of the Chauvin claim in the middle of the River des Peres at the place of beginning, containing 1,600 arpens of land.

W. H. COZENS,
Deputy United States Survey'r.

S'T LOUIS, MO., *April 10th*, 1865.

Robert, and the grant of 3 by 40 arpens to Alexis Loise. This point is also in the northern line of survey No. 2037, in the name of Charles Gratiot, of 84 arpens in front by 80 arpens in depth, and is also in the middle of the channel of the river Des Peres; thence—

N. 9° 30 E.

51 Ch's Pks.
With the eastern line of the Louis Robert grant, be-being also the eastern line of Charles Gratiot's survey No. 2036, of 400 arpens, and the western boundary line of the said Angelica Chauvin claim, the northern bank of river Des Peres bearing S. E., a stone.

0 50
1 50
8 90
A point in line with the south side of a brick spring-house, 70 links to the westward.

18 20
65 00
A stone on north side of a lane bearing N. 83° W., & S. 83° E., south edge of a pond.

71 00
North edge of a pond.

72° 23
Set a stone under a board fence in south side of the Olive street road.

72° 70
Centre line of said road, N. 83° W., & S. 83 E.

73 18
Set a stone on north side of road, and under a fence.

115 53
An old set stone in a pond.

116 66½
Established the northwest corner of the Chauvin claim from which a stone at the N. E. corner of Charles Gratiot's survey No. 2036 for 400 arpens bears N. 7½° E., 254 links distant.

Note these three corners are now covered with water.

Thence—

S. 82° 30 E.
Ch's Pks
With the northern boundary-line of the Chauvin claim of 1,600 arpens.

9 61
Ch's lk's
A point in line with the eastern front of Ricklicke's brick house, which is 123½ Pks to the northward.

11° 31½
Set a stone under the fence on the west side of the King's highway, 60 feet wide.

11° 75½
Intersect the centre line of said road bearing S. 7½° W. and N. 7½° E.

52 12° 13
An old well.

12 21½
Set a stone under a fence on the east side of the King's highway, a point in line with western front of Charles Bobb's brick house, & 43 Pks to the northward of line.

13 28

45° 50
Intersect the eastern line of survey No. 2620, a New Madrid location, in the name of Francis Deslisle, at a point S. 28° 45 W., 2 ch's 66 Pks from a stone at the N. E. corner thereof in this part of the survey.

70° 28
Set a stone on the south side of the S't Charles road in-

71 52
tersected the centre of the S't Charles road on the south line of survey No. 1253, in the name of the widow and representatives of Antoine Marvin under Alexis Picard, at a point N. 61° W., 1 chain 95¾ Pks distant from the stone at the N. W. corner of survey No. 1296, in the name of Joseph Mainville dit Deschene.

73° 63
Intersected the western line of the Grand Prairie Common field lands; prolonged northwardly at a point N. 28° 45 E. 77 links distant from the northwest corner survey No. 1296, in the name of Joseph Mainville dit Deschene.

116 66½	The northeast corner of Chauvin claim, from which the stone at the intersection of the east line of Goode avenue with the north line of a cross street in Robert Wash's addition bears S. 84° 30 W. 2 ch's 62½ l'ks, and a stone at the intersection of the east line of said Goode avenue with the south line of a cross street in Wash's addition, bears N. 9° 30′ W. 3 ch's 52 l'ks distant.
53	
	Thence—
S. 7° 30′ W.	With the eastern line of the Chauvin claim.
5 chains	Set a stone under a board fence.
16 ch's 5½ l'ks.	The north side of a brick house, at a point 33 l'ks west of the N. E. corner thereof.
17 57	Set a stone on the north side of the S't Charles road.
18 55	Set a stone on the south side of the road.
32° 00	Set a stone on north side of Page avenue.
33 67	Set a stone on the south side of Page avenue, and in the southern line of survey No. 3301 in the name of René Kurcerau.
38 94	The south line of the Chancellier tract.
75 47	Set a stone on the north edge of McClure avenue.
77 12	Set a stone on the south edge of McClure avenue.
83 40	Set a stone on the north line of Olive street road.
84 38	Set a stone on the south line of Olive street road.
109° 85	Set a stone.
115° 78	Intersected the north line of survey No. 363 in the name Auguste Chouteau, under the Laclede ligueste, commonly known as the Chouteau Mill tract, at a point 132 l'ks S. 75° E. from the stone at the N. W. corner thereof.
116 ch's 66⅔ l'ks	Set a stone at the southeast corner of the claim of Angelica Chauvin from which the stone at the northwest corner of the Chouteau Mill tract bears N. 43° 30 W. 1 ch. 68 l'ks distant, and the southwest corner of a brick house bears N. 19° 45 E. 3 ch's 38 links distant.
54	
	Thence—
N. 82° 30 W.	With the southern line of the said Chauvin claim.
1 ch. 46⅔ l'ks	Intersect the western line of the Chouteau Mill tract at a point S. 15° W. 1 ch. 06⅔ links distant from the stone at the northwest corner thereof.
45 43	Set a stone.
81 77	A point in line with the west side of the hon'able Edward Bates' brick house and 1 ch. 04 l'ks distant northwardly therefrom.
9 47	The stone at the northeast corner of the Gratiot league-square survey No. 2037.
105 00	A stone in the centre line of the King's highway, so called, being a county road bearing N. 7½ E.
116 00	Set a stone on the east bank of the River des Peres bearing south'd.
116 66⅔	The southwest corner of the Chauvin claim in the middle of the River des Peres at the place of beginning, containing 1,600 arpens of land.

W. H. COZENS,
Deputy United States Survey'r.

S'T LOUIS, MO., *April 10th*, 1865.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 11th, 1865.

SIR: Your communication of the 24th ultimo, transmitting the survey of the claim of Jean F. Perry, under Angelique Chauvin, made
55 by W. H. Cozzens, deputy surveyor, and numbered 1201, and the accompanying papers, having been duly considered, are now returned to your office. This survey was made under the direction of the claimants, and upon examination it is found that it does not conform to the calls of the grant required by the order of survey.

If any doubt upon this question was entertained by the department, it would be resolved by the decision of the Supreme Court of the United States in the case of Stanford vs. Taylor, 18th Howard, 409. It was held in that case that a survey east of Roberts' tract would not conform to the calls of the grant. Upon examination of the map it is seen that a survey could be made to conform reasonably with the proper calls, both as to the river, Roberts' tract, and distance from the city of S't Louis.

The survey is returned for your files, but it is not approved nor will any patent be issued upon it.

The survey being upon land not granted, no effect will be given to it by the department; and if a transcript is demanded by the claimants or party interested, a certified copy of this communication will be attached.

I am, sir, very respectfully, your ob't serv't,

J. P. USHER,
Secretary of the Interior.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

56 GENERAL LAND OFFICE,
May 12th, 1865.

I, Joseph S. Wilson, Acting Commissioner of the General Land Office, do hereby certify that the foregoing plat of survey, field notes, and letter are true and literal exemplifications from the files of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

[SEAL.]

JO'S S. WILSON,
Acting Commissioner of the General Land Office.

The defendants objected to its admission, because, first, it did not appear to have been made or approved by the proper officers of the Government of the United States; second, that it did expressly appear on the face of the paper that it had been disapproved by the proper officers of the Government of the United States. The court excluded the paper, and plaintiffs excepted thereto at the time.

57 Plaintiffs then offered a paper purporting to be a survey made by C. E. Solomon in 1874, by order of the S't Louis circuit court, in a cause pending therein between strangers to the present suit, in the words and figures following:

(Here follows map, marked page 57.)

58, 59

60 The defendants objected to the paper as incompetent and irrele-

vant, and the court excluded the same, plaintiffs excepting thereto at the time.

Plaintiffs then offered to show by the oral evidence of William H. Cozens and Charles E. Solomon that the survey made by Cozens in 1865 and that made by Solomon in 1874 were identical, and that they were a correct location of the land confirmed by the board of commissioners to John F. Perry, assignee of Chauvin, and described in certificate 1201. The defendants objected to any such evidence, and the court excluded the same, plaintiffs excepting thereto at the time. This was all the evidence in the cause. The court instructed the jury that the plaintiffs were not entitled to recover upon the evidence given: and thereupon the plaintiffs excepted to the said charge of the court. And in order that the aforegoing exceptions may appear of record, the plaintiffs present this bill of exceptions, and pray it to be signed and sealed, which is done.

SAM. F. MILLER,
Presiding Judge.

61 And afterwards, to wit, on the 9th day of November, A. D. 1875, in vacation of said court, the following further proceedings were had in said cause, to wit:

Writ of error allowed.—Citation signed.

ADELAIDE SNYDER ET AL., PLAINTIFFS,
vs.
THEODORE SICKLES ET AL., DEFENDANTS.

This day come the plaintiffs herein, by their attorneys, and present to the honorable Samuel Treat, one of the judges in this court, a writ of error to remove this case to the Supreme Court of the United States, and also a citation directed to said defendants, citing and admonishing them to be and appear at the next term of said Supreme Court; and thereupon said writ of error is allowed and the citation signed by his honor Judge Treat. Plaintiffs also filed and presented their bond in the sum of five hundred dollars, which, with surety therein, is approved.

It is thereupon ordered that a transcript of the record and proceedings in this cause be made out and certified to the next term of the Supreme Court of the United States

62, 63 The said bond so approved by the court is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, John Maguire , are held and firmly bound unto Theodore Sickles and William J. Lewis in the full sum of five hundred dollars, to be paid to the said Theodore Sickles and William J. Lewis, their heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents, sealed with our seals, and dated this ninth day of November, in the year of our Lord one thousand eight hundred and seventy five. Whereas, lately at the September term, 1875, of the circuit court of United States for the eastern district of Missouri, in a suit depending in said court between Adelaide Snyder, Alice Stanford, Horace Stanford, Homer Stanford, W'm T. Coleman, Montgomery Blair

and Thomas Ewing were plaintiffs, and Theodore Sickles and William J. Lewis were defendants, judgment was rendered against the said plaintiffs above named, and the said plaintiffs having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Theodore Sickles and William J.
64 Lewis, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now the condition of the above obligation is such that if the said Adelaide Snyder, Alice Stanford, Horace Stanford, Homer Stanford, W'm T. Coleman, Montgomery Blair, and Thomas Ewing shall prosecute said writ to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

J. MAGUIRE. [SEAL.]

—— —— —— [SEAL.]
—— —— [SEAL.]

Sealed and delivered in the presence of—

Approved by—

SAMUEL TREAT, *Judge.*

65 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, M. M. Price, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto attached to be a true transcript of the record and proceedings in case No. 501, of Adelaide Snyder et al., plaintiffs, against Theodore Sickles et al., defendants, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of St Louis, in said district, this 23rd day of November, in the year of our Lord eighteen hundred and seventy-five.

[SEAL.]

M. M. PRICE,
Clerk of said Court.
By A. P. SELBY, *Deputy.*

(Indorsement on cover:) No. 346. Adelaide Snyder, Alice Stanford, Home Stanford, William T. Coleman, Montgomery Blair, & Thomas Ewing, plaintiffs in error, vs. Theodore Sickles and William J. Lewis. E. Missouri C. C. U. S. Filed 21st January, 1876.

Supreme Court of the United States.

OCTOBER TERM, 1878.

No. 83.

ADELAIDE SNYDER AND OTHERS, PLAINTIFFS IN ERROR,

vs.

THEODORE SICKLES AND OTHERS.

In error to the Circuit Court of the United States for the Eastern District of Missouri.

BRIEF OF MONTGOMERY BLAIR, OF COUNSEL FOR PLAINTIFFS IN ERROR.

STATEMENT.

This is an action of ejectment brought by plaintiffs in error to recover a tract of land situate in St. Louis county, State of Missouri, containing 40 arpens in front by 40 arpens in depth, bounded on the west by United States survey No. 2036, made for Charles Gratiot, assignee of Louis Robert, and more particularly described in United States survey No. 1201, made for Jean F. Perry, assignee of Angelica Chauvin, returned by Wm. H. Cozzens, United States deputy surveyor, April 10, 1865, under the orders of the Commissioner of the General Land Office, dated 26th March, 1865, and as directed by the Secretary of the In-

terior, on the 18th March, 1865, (pp. 2 and 3.) Defendants' plea (p. 4) admits their possession to be within said survey, No. 1201; but denies plaintiffs' title to the land. At the trial, (pp. 7, 8, 9, and 10,) plaintiffs gave in evidence copies of the petition of Angelica Chauvin, dated 6th May, 1785, asking for a grant of 40 by 40 arpens of land situate on the river Des Peres, adjoining the land of Louis Robert; of the concession thereof by Francisco Cruzat, Lieut. General of Upper Louisiana, dated 12th May, 1785; of the deed of Angelica Chauvin, dated 1st November, 1805, conveying said grant to Jean F. Perry; of the petition of said Perry, dated 27th February, 1807, to the board of commissioners appointed under the act of 1807, (4 Stat., 441,) praying confirmation of said grant to him as assignee of said Angelica; and of the order of said board, dated 20th of August, 1811, whereby it is declared that "the board confirm to Jean F. Perry (assignee of Angelica Chauvin) one thousand six hundred arpens of land, and order that the same be surveyed conformable to his possession." The plaintiffs also gave in evidence the act of 6th June, 1874, (18 Stat., p. 62,) entitled "An act obviating the necessity of issuing patents for certain private land claims in the State of Missouri and for other purposes." The plaintiffs also gave evidence tending to show that they held all the title confirmed to said Perry; and in order to show that the land in question formed part of the land granted to Perry under Chauvin, offered in evidence, (pp. 11, 12, 13, 14, and 15,) the grant to Louis Robert by which said Chauvin was bounded on one side; the survey of said Robert's land by Antoine Soulard, surveyor general of Upper Louisiana; and also a grant to Charles Gratiot. The defendants objected to the admission of this evidence, and the Court excluded it from the jury, and the plaintiffs excepted to the decision. The plaintiffs were allowed to put in evidence, the letter of the Secretary of the Interior to the Commissioners of the General Land Office, dated March 18, 1865, directing a survey of the Chauvin

tract to be made on the east of Robert, as requested by the plaintiffs in error, (pp. 16, 17.)

The plaintiffs also gave in evidence (p. 18) the letter of the Commissioner of the General Land Office to the recorder of land titles at St. Louis, dated 24th March, 1865, communicating said instructions of the Secretary of the Interior, and directing him to have them carried into effect.

The plaintiffs then offered in evidence (pp. 19, 20, 21, 22) the survey returned by Wm. H. Cozzens, on 10th of April, 1865, in conformity to said instructions: the letter of Secretary Usher, dated May 11th, 1865, disapproving said survey, and stating, as his reasons therefor, that "it does not conform to the calls of the grant:" that the Supreme Court of the United States had held in the case of Stanford *vs.* Taylor, (18 H., 407,) "that a survey east of Robert's tract would not conform to the calls of the grant;" but adds that "upon an examination of the map it is seen that a survey could be made to conform reasonably with the proper calls both as to the river, Roberts' tract, and distance from the city of St. Louis." The Court, on motion of the defendants, excluded this evidence from the jury, and the plaintiffs excepted to this decision. The plaintiffs then (p. 22) offered in evidence a survey of the Chauvin grant made by C. E. Solomon, the surveyor of St. Louis county, made under order of St. Louis circuit court, and also offered to show, by the oral testimony of Cozzens and Solomon, that said Solomon's survey was identical with the Cozzens' survey, and that the land confirmed to said Perry under Chauvin was correctly located by said survey; which proof, on defendants' objection, was ruled out by the court, and plaintiffs excepted. On this, which was all the evidence in the case, the court charged the jury that the plaintiffs were not entitled to recover.

ASSIGNMENT OF ERROR.

The plaintiffs in error assign for error the above recited decisions of the court ruling out the evidence offered by them to locate the grant to Chauvin upon the land in question, and charging the jury that the plaintiffs were not entitled to recover.

ARGUMENT.

(1.) The question in this case is whether the act of 1874 completed the plaintiffs' title and made the question of location a judicial question. At the December term of 1855, in the case of Stanford *vs.* Taylor, (18 Howard, 409,) this Court decided that an action could not be maintained on this title without a survey, holding that the case of West *vs.* Cochran, (17 Howard, p. 416,) controlled the case. In that case the Court say :

"Congress having said, by the act of 1807, that the plaintiff shall be confirmed in what shall be designated by a survey made under the authority of the United States, according to the direction of the board of commissioners, and such direction to survey being a condition which the judgment of confirmation carried with it, until the survey was made, the plaintiffs title attached to no land, nor could a court of justice ascertain its boundaries, and this power was reserved to the Executive Department of the Federal Government."

It was upon the assumption that the law as thus stated by this Court was unaffected by the act of 1874, above cited, that the evidence offered to fix the location of the grant, was ruled out. The plaintiffs contend that the court erred in this; that the act of 1874 released the right to survey the land held to have been reserved to the United States and made an executive function by the act of 1807, vested a complete title in the confirmee and made the question of location a judicial question. The act of 1874

declares that "all the right, title, and interest of the United States, in and to all of the lands in the State of Missouri which have at any time heretofore been confirmed to any person or persons, by an act of Congress, or by any officer or officers, or board or boards of commissioners, acting under and by authority of any act of Congress, shall be, and the same are *hereby granted, released, and relinquished, by the United States in fee simple to the respective owners of the equitable title thereto, and to their respective heirs and assigns forever, as fully and completely, in every respect whatever, as could be done by patent issued therefor according to law.*

The confirmation claimed by the plaintiff had, at the date of this act, been "heretofore made by a board of commissioners acting under and by authority of an act of Congress:" and hence, by the terms of the act, "the fee simple in the land confirmed was thereby granted, released and relinquished to the owners of the equitable title as fully and completely in every respect whatever, as could be done by patent issued therefor according to law." The effect is the same as if the grant in question here had been particularly named, and it had been declared in the act that the fee simple in the land confirmed to Jean E. Perry on the 20th of August, 1811, was thereby granted to his legal representatives.

(2.) The act is remedial. Its declared object is to make these confirmations complete titles in themselves. The defect in the law of 1807, for which the act of 1874 was the remedy, had been shown by the action of the Department and the Court upon this and the Brazeau confirmation, which was similar in all respects. It was in these cases that the rulings of the State Court, holding such confirmations to be complete titles had been overruled by this Court, the confirmations held to be incomplete titles, and that the power was reserved by the act of 1807 to the Land Department to determine the location of the grant. This con-

struction of the act, Chief Justice Taney and Mr. Justice Greer had declared in their dissenting opinion, (1 Black, 203,) invested the Department with judicial power—the question of location referred to the Department being a judicial question "which depends altogether upon the description in the deed, and not upon the survey made by the Surveyor General of the United States, nor upon the judgment or decision of the Land Office," and in consequence of this construction of the act the litigation respecting the Brazeau grant, commenced nearly thirty years ago, after being four times before this Court, had not terminated.

Moreover after a struggle protracted for more than fifty years, Magwire had succeeded in getting the Land Department to survey and patent the land granted to Brazeau. The land in dispute being then patented to both Brazeau and Labaume, the Court had to pass upon the question of location; and the decision (8 Wall, p. 650,) showed that it was in its nature a purely judicial question. Hence even if Congress had the power to commit such questions to a surveyor, this litigation demonstrated conclusively the inexpediency of such action: for the only effect had been delay and the denial of the now admitted rights of the party for more than fifty years, involving him in ruinous and protracted litigation, the Court being obliged to decide the question before it could be terminated.

The act of 1862, (12 Stat., 410,) which impelled Secretary Usher to order a survey in this case, had been introduced by Senator Geyer, of Missouri, and had been passed by Congress to take away this judicial power from the Land Department. The act explicitly denies to the land officers the power they had assumed, to pass upon the validity of titles, and to refuse to make surveys for grants because they interfered with the surveys of other grants which they held to be better titles, and *commands* them to make surveys *of all* grants whenever applied for, declaring such surveys to be only *prima facie*

evidence of location, and not necessary when the land can be located without them.

But the act proved ineffectual, for the Department steadily refused after as it did before that act to give Chauvin a survey. The record does not give the full history of the efforts made to get a survey. But it appears, by the letter of the Secretary of 18th March, 1865, (pp. 16, 17,) that such efforts had continued through many years. A survey had been made, locating the tract on the west of Robert: and the claimants had asked for a patent on that survey, but the Department refused to approve it, and withheld the patent. The claimants acquiesced in this decision, and then asked for a survey on the other side of Robert. This application had also been refused prior to 1853; then the act of 1862, passed requiring the Department to give *all* claimants surveys and patents when they asked for them, and prohibiting the Department from denying surveys because they would interfere with other surveys which the Department held to be under better titles. Secretary Usher construed this act to be an admonition by Congress that the courts, and not the executive bureaus, were constituted to try titles, and ordered a survey to be made for the claimants. But when it was returned, although made in strict accord with his orders, he summarily rejected it.

A law which operates as these two cases, so familiar to the courts and the public, show the act of 1807 to have operated, certainly called for remedial legislation; and it was manifestly to meet the evils shown to have resulted from investing the executive department with the power of locating confirmations, that Senator Bogy presented the the act of 1874, divesting it of that power, and made these confirmations as complete titles as they could be made by patents, in order that the courts might decide the question of location.

(3.) But it was not to claimants alone that this feature of

the act of 1807 was injurious. It was decided in three of Magwire's cases, (1 Black., 199; 8 Wall., 650; 17 Ib., 253;) that the refusal of one Secretary to do his duty did not prevent his successor from carrying out the law; and that, until a Secretary could be prevailed upon to grant a survey and patent for the land confirmed, "it stood as it existed in 1810, when the commissioners confirmed it as valid." It necessarily followed also, as decided in Gibson *vs.* Chanteau, (13 Wall., 99,) that whilst the owner was thus disabled from asserting his rights, no length of adverse possession would bar them. Hence, a principal object of the act of 1874 was to render the statute of limitations operative, by investing the confirmees at once with complete title.

The case at bar illustrates the necessity of this. The map in the record shows that the city of St. Louis is rapidly approaching this land. As the law stood, prior to 1874, still further time might elapse before the title would be perfected, enabling those holding adversely to involve innocent persons with them before the survey and patent were obtained, and greatly retarding the progress of the city by keeping the title unsettled. In the end, as in Brazeau's case, the survey and patent would probably be obtained, for as Secretary Usher says, (p. 17,) although refusing to give it himself, "no one doubts that the party is entitled to a survey and patent."

But whilst it cannot be supposed, that a legal right so plain as to be acknowledged even by the executive officer who refused to grant it would always be thus thrust aside, if left to be executed by such officers, the fact that the adverse claimants had succeeded so long in defeating the law, admonished the legislature of the necessity of restoring the adjudication of the questions of private right involved in such controversies to the more independent tribunal created by the constitution to try such questions.

It would have been far better for all concerned in the Brazeau case, as well as for the public interests, if the act

of 1874 had been in force twenty-five years earlier. The struggle against the completion of the Chauvin title is but a repetition of the Brazeau history. Hence, Senator Bogy, who, like Senator Geyer, was an eminent lawyer at the St. Louis bar, in presenting the law of 1874, like his predecessor in introducing the act of 1862, aimed, by perfecting, to quiet titles.

(4.) But it is argued that the Court holds, (in 17 and 18 Howard,) that the judgment of confirmation attached to no land until the survey was made; and there being no survey in this case, it is not a confirmation *of land* within the meaning of the act of 1874; that that act only relinquishes "all the right, title, and interest of the United States, *in and to all lands which have at any time heretofore been confirmed by any board of commissioners*;" and that, by the confirmation in question, no *land* was confirmed until it was designated by survey. A sufficient answer to this reasoning is, that it renders the act nugatory; for the confirmations by the old board of the description of that under consideration were the only confirmations by any board which were not complete titles at the date of the act. Hence to give the act any force it must relinquish that right of survey, which the court had held to be reserved to the United States, and which alone, in the judgment of the Court, prevented the confirmees from holding the legal title. This reservation had given rise to protracted and ruinous litigation, in the course of which it was demonstrated that it devolved a purely judicial question upon an executive department; and that, after a struggle in the department and courts of more than fifty years, the court had finally to adjudicate the question. The provision had done no good, and had produced great evil.

(5.) The right of survey reserved by the act of 1807, was a right to survey the particular land described in the confir-

mation, the confirmation being this court holds in Burgess *vs.* Gray, 16, H. 63, "conclusive evidence of the equitable right" of the claimant in the land confirmed. Nor does this right of survey, although withholding all title from the claimant cognizable by the courts, take the grant out of the category of "*lands confirmed* by a board of commissioners." The claim was for specific land, was presented to a board of commissioners, and was confirmed by the board. The land was, therefore, "land which had been confirmed by a board," and ordered to be surveyed, and these adjudications had always been termed "confirmations," and were considered as complete titles to the land claimed, prior to 1853. And although it was then decided otherwise, and they have since been held to be *conditional* confirmations, needing survey to give them standing in court, they are yet spoken of even in the decision which puts them on this footing, as confirmations, or grants of land. Thus in 17 Howard, at p. 414, the court says: "In all cases where the tracts of land were *granted* by the board which had not been previously surveyed, the seventh section of the act declared that they should be surveyed."

(6.) The act, in terms, grants and relinquishes to the persons holding the equitable right, all the right, title, and interest of the United States. As the right to survey operated, as decided by this court, to continue in the United States all the title cognizable by the courts, it was a right in the land which was relinquished and granted by the terms of the act to the owner of the equitable title, and the claimants to whom the confirmation was given, and their legal representatives were those who held the equitable right, as decided by the court in 16 Howard, p. 63.

(7.) The act of 1874 had reference to those confirmations which the court had held to be imperfect: made them perfect; and declared that all lands which "have heretofore

been confirmed by any board of commissioners," but which the courts have held required further action by the United States to perfect the titles to them shall be deemed complete. The land in question is of this class. By the record it appears, pp. 9 and 10, that on the 20th of August, 1811, the board of commissioners, acting under and by the authority of the act of 1807, "confirmed to Jean F. Perry, one thousand six hundred arpens of land, (which he claimed as assignee of Angelica Chauvin,) and order that the same be surveyed." The court had held, in reference to such confirmations, in 18 Howard, p. 410, and in 17 Howard, p. 403, that the title remained in the United States till the survey ordered by the board was made. This reservation was not because the land was not sufficiently described in the grant and could not be identified, (for in that case it was void,) but because the court held that this identification was made by the law an executive function instead of a judicial function, and that the effect was to retain title in the United States. There was no difficulty in the way of the court's ascertaining the location if Congress had chosen to make the grant absolute, as it had done in some cases, but that Congress having chosen to give the power of location to the executive officers, and thereby retained the title, the courts must conform to the will of Congress. To remove this obstacle, Congress has now made the confirmation as complete as if a patent had issued according to law—that is, as if all the preliminaries to the issue of the patent, including the survey as provided for by the act of 1807, had been complied with. More comprehensive or effective language to sweep away all obstacles to the completeness of the grant could not be used.

(8.) If it belongs to the court and jury to ascertain the location of the grant, the competency of the proof offered by the plaintiffs in error for that purpose will not be

denied. The Chauvin concession is bounded on one side by the concession to Louis Robert. The location of the grant to Robert was fixed by official survey, made before the change of Government, and by an official survey of the United States. The court ought not to have refused to admit these official surveys. The official action of the Land Department, in relation to the location of the Chauvin grant, which was admitted, shows that the only question was whether it should be located on the east or west of Robert; that the Department had located it first on the west, and then on the east side of Robert; and that whilst professing to be able to locate the grant, it had failed and refused to make any location whatever. It appeared, also, that the survey on the west, which was first made, had been disapproved by the Department, with the concurrence of the claimant, and that many years afterwards the Department had, after a full and deliberate consideration of the whole subject, directed Deputy Surveyor Cozzens to lay it off on the east of Robert; but nevertheless, when Cozzens had made the survey accordingly, the Secretary set aside his own decision by disapproving the survey made in strict accordance with it. The court having allowed this to go before the jury, ought not to have refused to admit the testimony of Mr. Cozzens and of Mr. Solomon, the county surveyor, offered for the purpose of showing that the Cozzens survey, locating the grant on the east of Robert, was the proper location.

(9.) The question on the location of Brazeau's grant, decided by this Court, in 8th Wall., was in all respects similar. In that case, the only question was whether the grant should be located on the north or south side of the ditch known as "Labrauine's ditch." It was first decided by the Department that Brazeau lay on the south side of the ditch, and a survey and patent made accordingly, which the grantee refused to accept. In consequence of its interference there

with the grant to Esther, the Department, finally located it north of the ditch, where it conflicted with the survey and patent made for Labraume. Brazeau's case first came before this Court in 1855, before he got a survey and patent locating him on the north; and the Court then refused to consider the documentary and oral testimony tending to fix him there. But when he succeeded afterwards in getting a correct survey and patent, the Court did consider the documentary and oral testimony tending to fix him on the north side of the ditch, and found no difficulty in deciding that his land was there. The act of 1874, in giving Chauvin the fee simple, as fully and completely as could be done by patent, gave him the same right to have the Court and jury consider the documentary and oral evidence, locating him on the east of Robert, which the patent to Brazeau gave him to have the Court determine the location of his land; for the act expressly says that his title shall be deemed as full and complete as if he had a patent according to law.

As, according to the law of 1807, which is here referred to, a survey was a necessary preliminary to the patent, and the patent was based upon the survey, the necessary effect of the act of 1874, making the confirmation as complete a title as a patent issued under the act of 1807 upon the survey, is to dispense with that survey, and leave it to the court and jury to ascertain the location of the grant.

MONTGOMERY BLAIR.

Supreme Court of the United States.

OCTOBER TERM, 1878.

No. 83.

ADELAIDE SNYDER AND OTHERS, PLAINTIFFS IN ERROR,

vs.

THEODORE SICKLES AND OTHERS.

Supplement to Brief of Montgomery Blair, of Counsel for Plaintiffs in Error.

During the opening argument of plaintiffs' counsel, on Friday, 22d instant, Mr. Justice Clifford inquired whether, under the decisions of this Court respecting the Brazeau and Chauvin claims, (17 and 18 Howard,) an official survey was not still necessary evidence to locate this grant, notwithstanding the act of 1874 had vested the legal title in the plaintiffs. The counsel answered, that the survey was no longer necessary; that the decisions referred to were adverse, not because the survey was held *to be necessary evidence of location, but because the act of* 1807 *made the survey necessary to pass title.* The Court then said: (p. 416,) that the judgment of confirmation was conditioned upon a survey to be made, and that *until the survey was made the plaintiff had no title to any land of which the Court could take jurisdiction:* that Congress had in other cases confirmed unsurveyed lands absolutely and without attaching this condition to the grant.

But, by the act of 1807, Congress had reserved the power to the Executive Department to segregate the land by survey from other public and private land, and that the effect of the reservation had been to retain the title, and therefore no title had passed by the confirmation which gave the claimant any standing in Court until such survey was made.

The point decided in those cases was, therefore, not that the survey was necessary as the *exclusive evidence to fix the location of the grant*, after the grant was made, but that under the law, as it then stood, the survey was necessary to the completion of the grant. That, indeed, there was no grant at all until the survey. It was a sort of livery of seizen necessary to complete the title.

Now, the act of 1874 makes the title as complete as it could be made by the patent which the act of 1807 provided for. Hence the act of 1874 completes the title, and thus gives the Court jurisdiction over it: so that the question upon which the cases in 17 and 18 Howard turned, is not raised at all by this record.

The only question here, as stated by Mr. Justice Miller in the course of the argument, is, whether the documentary and oral evidence, offered below to show the location of the grant, was proper evidence for that purpose. Holding now a complete title, the plaintiffs' case cannot be distinguished from the case of Magwire, as it stood in 8 Wall., where the Court did admit and consider just such evidence as was offered in this case, and gave him the land upon it. It is true that Magwire then had, also, a survey, as well as a patent, but the survey in that case was held not to be the conclusive or controlling evidence of the location, and therefore was not the exclusive evidence of it; nor would a survey be conclusive in this case. Other evidence was held to be admissible for that reason in Magwire's case, and the reason obviously applies here with equal force.

The effect to be given to the testimony is not the question here. For the purposes of this argument it must be assumed

that the evidence, if it had been admitted, would have established the location. Its admissibility is the only question, and when the court admitted just such testimony and decided the question of location upon it in the Magwire case in 8 Wall., the question cannot be considered an open question. The circumstance that it was then offered in aid of the survey and is now offered independently, does not affect the question of the admissibility of such testimony. The only ground for excluding it in 17 and 18 Howard was because, as the law then stood, without the survey the party had no title to give him any standing in court. But now, by the act of 1874, he is expressly given as complete a title as if he had just such a patent under the act of 1807 as Magwire had, and has, therefore, exactly the same right to introduce documentary and oral testimony to support his title that Magwire had.

MONTGOMERY BLAIR.

November 25, 1878.

SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, A. D. 1878.

ADELAIDE SNYDER ET AL.,
Plaintiffs in Error,
vs.
THEODORE SICKELS, ET AL.,
Defendants in Error.

No. 83.

In error to the Circuit Court of the United States for the Eastern District of Missouri.

Brief of BRITTON A. HILL, of Counsel for Plaintiffs in Error.

WASHINGTON, D. C.
R. O. POLKINHORN, PRINTER,
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Case.

This is an action of ejectment by Snyder *et als.* against Sickels & Lewis, commenced the 25th of February, 1875, for the recovery of a lot of land in United States survey, No. 1201, for Jean F. Perry, assignee of Angelica Chauvin, for 40 by 40 arpents of land in Central and St. Louis Townships, Missouri, the plaintiffs being the grantees of Perry, the claimant and confirmee, by the first board of commission-

ers, under a decision and judgment of the 20th of August, 1811, by virtue of the acts of Congress of 1805, 1806, 1807, 2d vol. Stat., 324, 392, and 440. (Record, pp. 9, 10.)

By § 4 of act of 1807, this decision was "final against the United States," vesting the property in the confirmee, under the treaty of 1803, the acts of Congress and the decision of the Federal tribunal appointed to confirm the Spanish and French grants, claims, and rights of the inhabitants of the territory ceded by Spain to France in 1800, and by France to the United States in 1803.

By § 6 of act of 1807, the commissioners of the court were to give the party a certificate, "that he was entitled to a patent for a tract of land therein designated."

By § 7 of same act, "The tracts of land thus granted by the commissioners shall be surveyed at the expense of the parties, under the direction of the surveyor-general, or officer acting as surveyor-general," in all cases where no previous survey has been made.

No previous survey had been made by Spanish, French, or American authority.

Location by Spanish Grants.

The Spanish grant to Chauvin was made on the 12th of May, 1785, in fee simple, for "forty arpents of land in front by forty in depth, lengthwise the river Des Peres, from north to south, bounded on one

side by the lands of Louis Robert, and on the other by the King's domain * *." (Rec., p. 8)

The Spanish grant of April 6, 1779, to Robert, for "seven arpents of land in width by forty arpents in length, which is the customary depth; which lands adjoins by a straight line to the river Des Peres, and by taking its width on the north side of the King's domain, on one end to the lands of the grand prairie, and on the other end to the King's domain * *." (Rec., p. 12.)

The Spanish grant to Alexis Loise, of 8 June, 1779, was for three by forty arpents of land, adjoining Roberts on the west. (Rec., pp. 12 and 13.)

Loise sold to Beaujenon, who sold to Charles Gratiot, February 15, 1797, the three by forty arpents of land "situated on the river Des Peres, adjoining to the south the lands of the purchaser; on the east to the land which said purchaser has of Baptiste Laurens (under Roberts); on the west to that of Mr. J. Marie Papin, and on the north to the King's domain * *." (Rec., p. 14.)

Louis Robert sold to Baptiste Laurens, who also sold to Charles Gratiot on the 7th of February, 1797, the seven by forty arpents of land granted in 1779 to Robert, being "a tract of land, situated on the river Des Peres, of seven arpents in width by forty in depth, fronting on the south by the lands of the said Mr. Charles Gratiot; east, the land of Mr. Charles Tayon (claiming under Chauvin by fraud); west, by that of Fifi Beaujenon (under Loise), and north by the King's domain * *."

Charles Gratiot, having purchased these two tracts of land lying north of and adjoining his league square patented to him in 1796, asked for a Spanish survey, on 16 February, 1797, of the two tracts of land, or ten by forty arpents of land, "fronting on the south the lands of the petitioner; bounded east by the land of Charles Tayon (fraudulently claiming under Chauvin); west by that of J. Marie Papin, and north by the King's domain * *."

The survey was ordered on the 17th February, 1797; and the King's surveyor, Don Antonio Soulard, executed it, and made a plat thereof, on the 20th February, 1797. (Rec., pp. 13 and 14.)

A grant was made to Charles Gratiot, the 2d April, 1798, at New Orleans, by the Governor General, under the seals of arms, and countersigned by the secretary of the government for his Majesty, for the ten by forty arpents of land. (Rec., p. 14.)

The Spanish patents to Charles Gratiot are laid down on the large plat in the record, p. 22—Charles Gratiot, ten by forty arpents; survey, No. 2036, and league square survey, No. 2037.

The Spanish survey for Mad. Papin, No. 378, for forty by eighty arpents, is platted, on said map, on the west of Charles Gratiot, under Alexis Loise. (Rec., p. 22.)

All these locations of Charles Gratiot, for ten by forty arpents, and seven thousand and fifty-six arpents, and for Mad. Papin, for forty by eighty arpents, were made by the surveyor-general of the King of Spain before A. D. 1800; and Mad. Chauvin was

east of, and bounded west by Charles Gratiot's, Spanish patent survey, No. 2036. (See plat, Rec., p. 22.)

Angelica Chauvin, who had married Beaulieu and become his widow, settled upon this grant of 40 by 40 arpents in 1785, built a cabin thereon, and cultivated the land in 1785, 1786. She was driven off the place by the Indians. (Rec., p. 9.)

She did not apply for or obtain a survey from the surveyor of the King, and send it to New Orleans for a Spanish patent; but three or four of the wealthy settlers in Missouri, then upper Louisiana, procured Spanish patents from the Governor-General at New Orleans.

By the treaty of cession of 1803 the United States assumed the duties of a sovereign over the inhabitants and their lands, and by the acts of Congress of 1805, 1806, and 1807, created a court of commissioners to perfect the titles of the inhabitants to their lands by confirmations, surveys of the United States, and patents.

The confirmation of Perry, assignee of Chauvin, on the 20th Aug., 1811, was final against the United States, and the surveying department was commanded to survey this confirmation in the place where it was located, and where it had been inhabited, cultivated, and possessed in Spanish times. § 7, § 6, act 1807, U. S. Stats., vol. 2, pp. 441–2.

Charles Gratiot, Beaugenon, Bequet, and Vincent Bouis were witnesses before the Board of Commissioners in 1806, and proved the widow's cabin, cultivation, and her children and slaves on the place, so

as to bring her claim for confirmation within the treaty and the confirming acts of Congress.

The Spanish surveys and patents were all well known in 1811 to the surveyors in St. Louis. The location boundaries of the land confirmed to Perry had been fixed by the Spanish surveys of 1797. The 40 by 40 arpents must be bounded on one side by Louis Robert and the River des Peres. Look at the map (p. 22 and 57) and see how perfectly certain the location becomes after the Spanish surveys and patents of 1797 were executed.

The 40 by 40 arpents fit into the right angle made by the surveys of the league square on the south of Chauvin, and of the 10 by 40 arpents on the west of Chauvin. The River des Peres is at the southwest corner of Chauvin, running north and south for several arpents on or near the same line as the western surveyed line of Chauvin by Cozzens in 1865 and by C. E. Salomon, surveyor of St. Louis County, in 1874. The existing locations by surveys of Spanish grants, adjoining Chauvin on two sides, make the location of Perry's confirmation in 1811 an absolute certainty. It cannot be located in any other place by the United States under the treaty of 1803 and the acts of Congress.

Representing the sovereign grantor of the land, the locations by the former sovereign of all the tracts adjoining Chauvin are a finality, and the United States had but one fact to ascertain. The grant to Chauvin must be bounded on one side by Louis Robert and the River des Peres. The Spanish surveyor of the King has placed Loise for 3 by 40 arpents on the

west of Robert and Mme. Papin for 40 by 80 arpents on the west of Loise. Gratiot's league square is on the south of Robert, Loise, and Papin, and extends about nine arpents east of the southeast corner of Robert, as patented to Gratiot in 1797. The Spanish surveyor-general would have located Chauvin's grant in 1811 at once east of Robert-Gratiot, on the River des Peres and adjoining the Robert-Loise-Gratiot Spanish patent. No surveyor can find or make any other location than the one fixed by the co-terminous boundaries in 1797 by the sovereign power of the King of Spain.

The locations of Robert, Loise, Papin, and Chauvin, under the descriptive terms of the grants in 1779, and 1785, would be obscure, but after the Spanish official surveys of 1797 all doubts were removed and the boundaries fixed on the west and south. But yet the U. S. surveyors can find no boundary for 54 years, except on the Papin patent, ten arpents west of the boundary line.

The plaintiff offered to prove on the trial of this cause that under instructions of the Commissioner of the General Land Office of 24 March, 1865, to survey the Perry confirmation, Wm. H. Cozzens made a survey thereof on the 5th, 6th, 7th and 8th days of April, 1865, which was certified on the 10th and returned with a plat and field notes to the Commissioner of the General Land Office on the 14th day of April, 1865, and filed as a record in said office. Afterward, on the 24th of April, 1865, the Commissioner, without any appeal, sent the survey and papers to the Secretary of the Interior. The Secretary on

as to bring her claim for confirmation within the treaty and the confirming acts of Congress.

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the 11 May, 1865, decided exactly opposite to his decision of the 18th March, 1865, and says *inter alia:* "The survey is returned for your files, but it is not approved, nor will any patent be issued upon it. The survey being upon land not granted no effect will be given to it by the department; and if a transcript is demanded by the claimants or party interested, a certified copy of this communication will be attached." J. P. Usher, Secretary of the Interior." (Rec. pp. 16 to 22.)

The plaintiffs also "offered to show by the oral evidence of Wm. H. Cozzens, and Charles E. Soloman, that the survey made by Cozzens in 1865, and that made by Soloman in 1874 were identical, and that they were a correct location of the land confirmed by the Board of Commissioners to John F. Perry, assignee of Chauvin, and described in certificate 1201. The court excluded the survey and the oral evidence, plaintiffs excepting (Rec., p. 23). The court charged the jury that the plaintiffs were not entitled to recover and plaintiffs excepted. *Id.* The jury found for the defendants; plaintiff moved for a new trial which was denied, and plaintiffs excepted and sued out a writ of error to this court.

Brief.

1st. The court below erred in excluding from the jury the documentary evidence and parol testimony of the definite and certain location of the 40 by 40 arpents of land, east of Robert, on the river Des Peres, confirmed to J. F. Perry on the 20th August,

1811, under the treaty of Paris of 1803, and the acts of Congress of 1805–6–7, and directed "to be surveyed agreeably to the possession," and by the act of 1862, to be surveyed under the direction of the party claiming the land confirmed.

The acts of Congress of 1805–6 and 7, have been construed by this court, in *Strother* vs. *Lucas*, 12 Peters, 410; *Landers* vs. *Brant*, 10 How., 348, 373; *Burgess* vs. *Gray*, 16 How., 48; *West* vs. *Cochran*, 17 How., 413, 417; *Stanford* vs. *Taylor*, 18 How., 411, and *Maguire* vs. *Tyler*, 8 Wall., 650, and 17 Wall., 253.

The rule of law established by these decisions is, that confirmations by the first Board of Commissioners though final as against the U. S. do not pass a legal title from the United States to the confirmee, that no suit can be brought in U. S. court until an U. S. survey is made and a patent issued thereon; that the confirmee has the equitable right and claim to the land from the date of confirmation, and is entitled to a survey thereof under the direction of the surveyor-general by § 7, and to a patent by §§ 6, 7, of act of 1807, 2 U. S. Stat., 441–2.

When a survey is made and a patent issued under said act, it relates back to the date of the claim or of the confirmation and passes on such day the full legal title to the land so surveyed and patented to the confirmee and his legal representatives. *Menard's heirs* vs. *Massey*, 8 How., 308, 310; *Landes* vs. *Brant*, 10 How., 371–3, directly in point.

The confirmation to Perry, whenever surveyed and

patented, will pass the title to Perry as of the 20th of August, 1811, the date of the confirmation. If it has been surveyed and patented the title has passed to Perry and his legal representatives as of that date.

Any subsequent survey or patent for the land confirmed to Perry is void, because the land was not subject to sale or location after the confirmation. The U. S. held the land in trust for the sole use and benefit of Perry and his legal representatives from and after the 20th August, 1811.

The confirmation alone prohibited all subsequent sales, locations, surveys, and patents to or for any other persons, under any form of proceedings. No act could be done by the officers of the U. S. after August 1811, to divest the equitable title of Perry in and to this land. No act can be done now to divest it. It was a vested equity and the sovereign was the trustee for Perry up to the act of June 6, 1874, 18 Stat., p. 62, when the legal title was granted to Perry, uniting the legal and equitable title in him and his legal representatives in the same manner and with like effect, as if a patent of the U. S. had issued to him on that day, for 40 by 40 arpents of land east of and adjoining Louis Robert, where Charles Gratiot's Spanish patent of 1797 is located and fixed by a sovereign act of power, as authentic and full proof of the facts appearing in the archives and records of the Spanish government, binding and concluding Spain, France, and the United States forever.

2d. Prior to the acts of Congress of June 2d, 1862, 12 U. S. Stat., p. 410, and 6 June, 1874, 18 Stat.,

62, the plaintiffs under Perry would not have had any standing in a court at law or in equity, because the legal title had not passed from the United States to Perry. *West* vs. *Cochran*, 17 How., 413, 417; *Stanford* vs. *Taylor*, 18 How. 411; *Maguire* vs. *Tyler*, 1 Black, 198–9; *Same* vs. *Same*, 8 Wall., 650, 17 Wall., 253.

The *obiter dictum* of Mr. Justice CATRON, in *Stanford* vs. *Taylor*, 18 How., 411, that "the concession had no definite boundaries," is not any authority on that question of fact, for the turning point in the case was, that Perry had no United States survey or patent for the confirmation of 1811 to vest the legal title in him for the land east of Robert; and it was the *confirmation* "to be surveyed conformably to the possession," and *not* the concession, as stated in the opinion.

3d. The act of 1862 repeals the §§ 6 and 7 of the act of 1807, and commanded the survey to be made "under the direction of the proper officers of the "Government of the United States, *upon the appli-* "*cation of the parties claiming or owning the same*, "and at their expense, * * * but nothing in "the law *requiring the executive officers to survey land* "*claimed or granted under any laws of* the United "States shall be construed either to authorize such "officers to pass upon the validity of the titles "granted by or under such laws, or to give any "greater effect to the surveys made by them than to "make such surveys *prima facie* evidence of the true "location of the land claimed or granted, *nor shall*

"*any such grant be deemed incomplete for the want of* "*a survey or patent, when the land granted may be as-* "*certained without a survey or patent.*"

All of the decisions cited under point 1st in this brief and the statutes §§ 6 and 7, 1807, are of no further authority under this act of 1862, which directly and plainly authorizes and directs the location of the land granted with or without any survey or patent.

4th. The confirmation of Perry was surveyed "*under the direction* of the Commissioner of the General Land Office of the 24th of March, 1865, pursuant to an opinion of the Secretary of the Interior, of the 18th of March, 1865. (Rec., pp. 16, 17, 18, 19, 20, 21.)

This opinion of the Secretary of the Interior (Rec., p. 17), authorized the party, claiming under the Perry confirmation, to "*designate the land upon which he will have the survey,*" by authority of said act of Congress of June 2d, 1862.

Under this opinion, the Commissioner of the General Land Office, having the sole power, ordered the survey to be made by William H. Cozzens. p. 18. This survey was made early in April, 1865, and returned to the Commissioner of the General Land Office on the 14th day of April, 1865, when that officer filed it as a record without making any decision thereon; and on the 24th day of April, then instant, he sent the survey to the Secretary of the Interior without any appeal (Rec., p. 22), who did not approve it, on the authority of *Stanford* vs. *Taylor*, 18 How., 409; which decision had no validity after the

passage of the act of 1862, repealing the § 7 of the act of 1807, on which the decision was based.

5. The survey of Cozzens of 1865, when made, certified, and filed in the General Land Office, was a finality under the act of 1862, not subject to appeal to the Secretary of the Interior. Under the new surveying act of 1862, Perry could locate his confirmation, without any survey or patent, by evidence in a court of justice.

The only office of the new survey was to perpetuate *prima facie* evidence of the true location of the confirmation by obtaining a patent thereon. The parties confirmed can now recover on the confirmations of 1806 to 1811 by evidence of location, without any survey or patent. The new law was designed to abolish the Star Chamber courts of the General Land Office and of the Interior Department, where the *ex parte* proceedings of clerks, Commissioner, and Secretary, ~~no~~ *ex parte* affidavits, doubtful letters, scaly muniments of title, and personal solicitation, gave birth to decisions of monstrous iniquity, plundering the true owners of their lands, homes, and firesides after seventy-five years' possession. See *Tyler* vs. *Magwire*, 8 and 17 Wallace.

The act of 1862 leaves the validity of titles to confirmed lands, not yet surveyed, to be tried before a court and jury, instead of the dark, silent den of the Star Chamber.

6th. The Secretary of the Interior had no power to disapprove the survey of Cozzens of 1865, under

the new law of 1862. No appeal would lie from the Commissioner of the General Land Office to the Secretary, on a survey made after June 2, 1862.

See act of 4th July, 1836, 5 Stat., 107, vesting in the Commissioner all the executive duties as to surveys, sales, and patents of public lands and private land claims, giving him sole supervision and control under the direction of the President.

This sole control and supervision of the Commissioner continued until 1858, June 12th, Brightly Dig., 1104, § 2, when Congress gave an appeal from the Commissioner to the Secretary on decisions of the district land officers, in contests between settlers for the right of pre-emption. I can find no other appeals authorized.

The Hon. Thomas Ewing, who had been Secretary of the Interior, and as a land lawyer had no superior in the Republic, in his brief, 1 Black, 196, *Maguire* vs. *Tyler*, says: "No appeal lay to the Secretary of the Interior." That was a case of a survey for Brazeau, under § 7 of act of 1807. Mr. Justice CATRON held otherwise, and affirmed the decree of the court below on a special finding of facts, that Brazeau's land was truly located south of Labeaumes ditch and patent, as appeared in the record of the decree, for the defendant claiming under Labeaume. This success of the defendant, on the merits, was the most fatal success known in the history of jurisprudence. On the motion of Mr. Stanton, to dismiss for want of jurisdiction, Mr. Justice CATRON, in his opinion, created several new statutes, *obiter dictum*, giving the Secretary plenary powers of adjudication upon all

surveys, when by the law the Commissioner's decision was final, and no appeal would lie to the Secretary. The Star Chamber seized upon the jurisdiction so created, and Caleb Smith, then Secretary, made a new decision and judgment on this very *obiter dictum*, giving Brazeau a new survey and patent in June, 1862, on top of Labeaume's patent of March, 1851, supported by an enclosed possession from 1798 to 1862.

This Star Chamber decision was held valid by this court, in 8 and 17 Wallace, on same title, and it did overrule *West* vs. *Cochran*, 17 How., 313, 17; *Maywire* vs. *Tyler*, 1 Black., 198, and a decree of a court of equity of 1858, then and still in force between the same parties, finding as facts in the decree that Brazeau's confirmation was south of Labeaume's patent at the foot of a large mound. The absolute verity of the record of the decree of 1858, the possession of sixty-four years, the patent to Labeaume of March, 1851, ten years' limitation, and the solemn decisions of this court were only cobwebs before the despotic power of Caleb Smith, secretary-judge of the Star Chamber court created by the obiter dictum in the opinion of Mr. Justice Catron.

Congress was in session at the time of this decision of Smith, and the Hon Henry S. Gryer, Senator from Missouri—a lawyer of distinguished ability in Missouri, Spanish and French land titles—prepared the act of June 2d, 1862, and secured its passage. This act has overthrown the star chamber courts, and restored the administration of law and justice to the

courts of the Constitution, giving litigants the right of a trial by a jury under the laws of the land.

7th. It is immaterial, under the act of 1862, whether the star chamber court of the Secretary, in 1865, had any jurisdiction on appeal from the other star chamber court in the Land Office. The act of 1862 gave Perry the right to a survey of the land claimed by him, by a surveyor to be selected in the district where the land was. The survey was to be made of the claimant's claim. It was so ordered; it was made in the place where every surveyor in St. Louis for seventy years past knew the land was located. It was certified and returned to the Land Office on the 14 April, 1865. The commissioner placed it on file as a record of the department. He certified out an exemplified copy to the claimant. This is conclusive proof of the survey, § 7, act 4 July, 1836, 5 Stat., 108, in all courts of justice, § 1, act 3 March, 1843, 5 Stat., 627.

If the Secretary or the Commissioner refuse to approve the survey, or to issue a patent, the claimant may sue for his land and prove his land location before a court and jury without a survey of the United States or a patent.

8th. Pending the survey or no survey of Perry's confirmation in the Star Chamber courts, Congress, on the 6th June, 1874, disposed of all questions in this case by passing an act (18 Stat., 62) granting the title of the United States to Perry in fee simple by a law containing the words "shall be and the same are

hereby granted, released, and relinquished by the United States, in fee simple, to the respective owners of the equitable titles thereto, and to their respective heirs and assigns forever, as fully and as completely, in every respect whatever, as could be done by patents issued therefor according to law."

This act passed the title to the land confirmed to Perry and his legal representatives at the date of the act, and the equitable title of Perry by the confirmation of 1811, draws this naked legal title to it by relation in like manner as if a patent had issued to Perry and his legal representatives on that day. *Landes* vs. *Brant*, 10 How.; *Menard's heirs* vs. *Massey*, 8 How., *supra*.

The jurisdiction of the star chamber courts of Washington and of the executive officers of the U. S. over Perry's title and confirmation ceased on the 6th June, 1874. The State courts of Missouri have full jurisdiction over the question of location, of tenure, and of the modes of its acquisition and transfer in Missouri, after the title has passed from the U. S., to the exclusion of the U. S. officers and courts. *U. S.* vs. *Fox*, 94 U. S. Rep., 315.

This grant to Perry of 1874, and the prior grant to him of 1811, under the act of 1807, is to be located under the laws of Missouri.

The question is precisely parallel to that raised on the confirmation of village lots, field lots and out lots, in St. Louis, by the act of 13th June, 1812, 2 Stat., 748. The grant by that act vested the title like the act of 1874, *in presenti*, on a possession prior

courts of the Constitution, giving litigants the right of a trial by a jury under the laws of the land.

7th. It is immaterial, under the act of 1862, whether the star chamber court of the Secretary, in 1865, had any jurisdiction on appeal from the other star chamber court in the Land Office. The act of 1862 gave Perry the right to a survey of the land claimed by him, by a surveyor to be selected in the district where the land was. The survey was to be made of the claimant's claim. It was so ordered; it was made in the place where every surveyor in St. Louis for seventy years past knew the land was located. It was certified and returned to the Land Office on the 14 April, 1865. The commissioner placed it on file as a record of the department. He certified out an exemplified copy to the claimant. This is conclusive proof of the survey, § 7, act 4 July, 1836, 5 Stat., 108, in all courts of justice, § 1, act 3 March, 1843, 5 Stat., 627.

If the Secretary or the Commissioner refuse to approve the survey or to issue a patent, the claimant may sue for his land and prove his land location before a court and jury without a survey of the United States or a patent.

8th. Pending the survey or no survey of Perry's confirmation in the Star Chamber courts, Congress, on the 6th June, 1874, disposed of all questions in this case by passing an act (18 Stat., 62) granting the title of the United States to Perry in fee simple by a law containing the words "shall be and the same are

hereby granted, released, and relinquished by the United States, in fee simple, to the respective owners of the equitable titles thereto, and to their respective heirs and assigns forever, as fully and as completely, in every respect whatever, as could be done by patents issued therefor according to law."

This act passed the title to the land confirmed to Perry and his legal representatives at the date of the act, and the equitable title of Perry by the confirmation of 1811, draws this naked legal title to it by relation in like manner as if a patent had issued to Perry and his legal representatives on that day. *Landes* vs. *Brant*, 10 How.; *Menard's heirs* vs. *Massey*, 8 How., *supra*.

The jurisdiction of the star chamber courts of Washington and of the executive officers of the U. S. over Perry's title and confirmation ceased on the 6th June, 1874. The State courts of Missouri have full jurisdiction over the question of location, of tenure, and of the modes of its acquisition and transfer in Missouri, after the title has passed from the U. S., to the exclusion of the U. S. officers and courts. *U. S.* vs. *Fox*, 94 U. S. Rep., 315.

This grant to Perry of 1874, and the prior grant to him of 1811, under the act of 1807, is to be located under the laws of Missouri.

The question is precisely parallel to that raised on the confirmation of village lots, field lots and out lots, in St. Louis, by the act of 13th June, 1812, 2 Stat., 748. The grant by that act vested the title like the act of 1874, *in presenti*, on a possession prior

to 1803. The proof of possession and cultivation before 1803, and of the location of the different lots, was held by the State courts to be the subject of proof by witnesses and deeds and records on the trial.

Vasseur vs. *Benton*, 1 Mo., 296;
Gurno vs. *Jarvis*, 6 Mo., 330;
Page vs. *Scheibel*, 11 Mo., 167, and many other cases.

These cases have been approved by this court in *Guitard* vs. *Stoddard*, 16 How., 494, on a full review of all the decisions. See, also, *Glasgow & Taylor* vs. *Hortiz*, 1 Black., 595; *Mackay* vs. *Dillon*, How., 421.

It has become a rule of property for fifty years in Missouri, and has been approved by this court for a quarter of a century.

What land passes by the confirmation of 1811 and the acts of 1807 and 1874 can only be determined on the trial by evidence of the location to be given before a court and jury. The Star Chamber courts and their *ex parte* proceedings in the Land Office have no longer any jurisdiction over the surveys or the patents on confirmations of Spanish or French grants in Missouri.

9th. If the survey of Cozzens of 1865 be in force, it is *prima facie* evidence of the location; if it be not in force, then the proof of the location may be made on the trial, under the act of 2d June, 1862, and under the grant of 1874, by force of the decisions of this court approving the rulings of the courts of Missouri for half a century.

This court will no longer say the title has not attached to any land for the want of a survey. The title in this case has attached to 1,600 arpents of land in a square east of and adjoining Robert, now Gratiot, fixed and definite now as it was in 1811; and it is a disgrace to the Government that the New Madrid speculators have been able to buy surveys of the Federal officers for fraudulent earthquake certificates on Perry's land, confirmed to him in 1811 and definitely located, while the true owner of the equitable title, with a fixed boundary by Robert and the river on the west, has not been able to get any survey of his confirmation, except by Cozzens in 1865.

10th. The title of plaintiffs under the confirmation to Perry, assignee of Chauvin, has been used by the Lindell heirs at my suggestion, for many years past, to defend their ancestors and their own possession since 1831, for the 650 acres included within the Hunot and Conway, N. Madrid locations. They have bought all the titles there, under Hunot, Conway, Perry, and others, for the land south of Olive street, but in procuring an act of Congress of the 30th June, 1864, under bad advice, to perfect the N. Madrid locations of Hunot and Conway, they opened a door for an attack by Hunot and Conway's representatives, New Madrid land pirates, who sued them in June, 1874, and thus I came into these cases, to defend my clients of thirty-five years standing, by validating Perry's confirmation, and thus retaining their ancient and lawful possessions. There is no speculation here. The only controversy arises between fraudulent and

void New Madrid locations, and a valid confirmation of 1811 to Perry, under whom plaintiff's claim title.

The New Madrid locations on the land covered by the confirmation to Perry, are: Joseph Hunot, 480 acres; James Conway, 170 acres; Francis Delisle, 160 acres, and Joseph Genereux, 160 acres. The defendants in this case before the court, claim under Genereux, on a N. M. location of 1818, and a patent thereon of the 12th of May, 1828. Rec., p. 7.

The ancient N. M. pirates found no difficulty in having a survey made for Genereux in 1818 that covered Perry's lands and several field lots. The Genereux survey and patent are void on their face.

My controversy is with the New Madrid locators, on the land confirmed to Perry in 1811, and the field lots confirmed to settlers in Spanish times.

This court, in the great cases of *Stoddard* vs. *Chambers*, 2 How., 284, (1844,) *Mills* vs. *Stoddard*, 8 How., 345, and *Bissell* vs. *Penrose*, (1850,) overturned all the fraudulent titles and patents procured by New M. pirates upon ancient French grants and possessions, confirmed by the act of July 4, 1836, subject to all prior grants made under the laws of the United States.

The N. M. locations that were not patented between 1829 and 1832, when the reservation of the Spanish and French claims had ceased, were declared to be null and void.

If plaintiffs had not been cut off at the threshold of the case, by the exclusion of all the testimony offered, which showed a perfect equitable title as early

as the 20 August, 1811, it would have appeared that the Genereux N. M. location and patent were covered by elder grants and confirmations, and wholly void.

But on the face of this record the defendants patent is void, under the authority of the foregoing cases, the patent having issued in 1828.

The legal title to the land sued for remained in the United States until the 6 June, 1874, when it was granted to Perry, who had acquired the equitable title to the land 40 by 40 arpents, east of Robert, on the 20 August, 1811, by the confirmation.

The defendants have, therefore, been mere trespassers on the lots sued for, up to June, 1874, when the plaintiffs acquired the legal title and are entitled to the land sued for, and to a judgment in this action, if the proof of location is admitted on the trial, as it should be.

The case of *Guitard* vs. *Stoddard*, 16 How., 507–8, is so directly in point in this case on the admissibility of the evidence offered to prove location and excluded by the court below, that I briefly state the points. Guitard sued Stoddard in ejectment for forty arpents of land upon a title under the act of 13th June, 1812, granting cultivators or possessors of field lots, village lots, and commons, in, adjoining, or belonging to the town of St. Louis, prior to the 20th December, 1803, a title in fee, at the date of the act. Guitard had no concession or survey, permit to settle, or any paper evidence of title whatever. He had never claimed any confirmation of his lot from the United States.

The defendant had a grant of 1836, a survey of 1806, and a claim of same year under the act of 1805 enlarged by the act of 1807, a United States survey, and a grant of 1836. See case.

The court below instructed the jury that the plaintiff could not prove the location and boundaries of his out lot under the act of 13th of June, 1812, by proof before a jury on the trial of the cause. This court held that such proof was admissible on the trial, to prove the location of the possession before 1803, which would confer a title superior to the claim of 1806, the survey of same year, the grant of 1836, and the United States survey. *Mackay* vs. *Dillon*, 4 How., 421; *Le Bois* vs. *Brammell*, *Id.*—next case; *Lajoye* vs. *Primm*, 3 Mo., 529; *Page* vs. *Scheibel*, 11 Mo., 167; and to these cases may be added *Glasgow & Taylor* vs. *Hortez*, 1 Black, 599, and the cases cited in my brief in that report.

The act of June, 1874, is the same act of the 13th June, 1812, applying to all confirmations, and vesting titles without any survey, or warrant, or other documentary evidence than the confirmation before a board of commissioners or officers. Each act passes a title *in presenti* to the confirmee, and the locations must be made in courts of justice in the States where the lands lie, or not at all.

But the act of 2 June, 1862, directly repeals § 7 of the act of 1807, and directs the location of any confirmation without a survey or patent, that is to say, by proofs and evidence before courts of justice on the trial of the cause.

Much stress is laid upon the phrases in *Menard* vs.

Massey, 8 How.; *West* vs. *Cochran*, 17 How.; *Stanford* vs. *Taylor*, 18 How.; and *Magwin* vs. *Tyler*, 8 and 17 How., that where the grant is vague and indefinite as to boundaries, the confirmation *attaches to no land* until a survey by the United States.

That is not the case here. The confirmation is ordered to be surveyed conformably to the possession. The grant calls for boundaries on the river Des Peres and Louis Robert's grant on one side. The land confirmed must be on one side of Robert's tract and also on the river Des Peres. All these Spanish surveys were in the *Registre d'Arpentage*, before the Commissioners in 1811, when the confirmation was made. The exact location of Perry's confirmation had already been established by the two Gratiot patents on the west and south of Perry under Chauvin. The square of 40 by 40 arpents was already designated by the Spanish patents and the river Des Peres.

But if there had been any doubt as to which side of Robert, Perry's confirmation was to be surveyed, then, as the land west of Robert, to the extent of 40 by 83 arpents, had been surveyed in Spanish times, the law would require the land officers and surveyors of the United States to reserve the land east of Robert or Charles Gratiot to satisfy Perry's confirmation, which never could be located in any other place; and so the confirmation did attach to the 40 by 40 arpents east of Gratiot's 10 by 40 arpents, north of nine arpents of Gratiot's league square and on the River des Peres.

The court, in *Stanford* vs. *Taylor* (1854), did not determine whether the grant and confirmation to

Perry, assignee of Chauvin, could be definitely located by proof on the trial, but held that no suit could be maintained on the confirmation without a United States survey and patent. The *obiter dictum* of Mr. Justice CATRON cannot determine the question of fact as to the definiteness of the boundaries of the Perry confirmation, the proofs of which were excluded by the learned justice on the trial of the cause. The dictum was not true; the evidence now before the court shows it to be false.

Perry's confirmation must be located on the east or west side of Louis Robert's grant of 1779, which was sold to Charles Gratiot and included within a Spanish survey and patent of 1797, establishing, by an act of sovereignty, a fixed boundary with monuments and a river on the west side of Mme. Chauvin. The Spanish surveyor-general, at the same time, surveyed Loise, on the west side of Robert, and included his land in the Spanish patent to Gratiot.

In the same year the same surveyor established Madame Papin's tract for 40 by 80 arpents west of Loise, then Gratiot.

On the south of all these tracts and adjoining them was Gratiot's Spanish patent for 7,056 arpents—a league square.

When the territory was ceded by Spain to France in 1800, and by France to the United States in 1803, all these tracts of land were established with fixed boundaries except Chauvin, and she was to have 40by 40 arpents of land adjoining Robert or his assignee, Gratiot.

The Spanish surveys and patents of 1797 are represented thus:

84 Arpents.

GRATIOTS LEAGUE SQUARE.

1797.

SPANISH PATENT.

Papin Spanish Survey of 1797.

Confirmed 1809.

40 x 80 Arpents.

River Des Peres.

20 x 40 Loisc } Gratiot
7 x 40 Robert } 10 x 40

40 Arpents.

40 x 40

Arpents.

40 Arpts.

Comment is unnecessary. The 40 by 80 arpents had been confirmed in 1809 to J. Marie Papin, by the same Commissioners, and they, probably, in their poor judgments, may have supposed that the 40 by 40 arpents of land *adjoining* Robert, then belonging to Charles Gratiot, and running north and south on the river des Peres, was and must be the land granted to the widow. On the face of these ancient records of the Spanish government, the proof is conclusive that the Chauvin-Perry confirmation is definitely fixed by the surveyor of the King of Spain, to be bounded west by Robert-Gratiot and the river des Peres, south at the southwest corner by the Gratiot league square Spanish patent.

The 40 by 40 arpents in a square, confirmed to Perry in 1811, must therefore be adjudged and found to be at the identical place surveyed by Cozzens in 1865, under orders from the General Land Office. Although but a small portion of the proofs of location are in the record, yet upon these prominent facts alone, if this court had the power, it would adjudge the land to be where the Spanish surveys demonstrate it must be and remain forever.

The simple question remains, whether this high court of the Republic, organized to construe the Constitution and treaties of the nation, will prevent the claimants, under Spain and France, from locating their land by proof, in a court of justice, so that they may expel the trespassers under void N. Madrid locations, from the lands secured to them by treaty, granted to them by confirmation, and by acts of Con-

gress, and now belonging to them in fee simple absolute, by the grant of 1874.

The judgment should be reversed and the case remanded.

BRITTON A. HILL.

WASHINGTON, *Nov.* 26, 1878.

UNITED STATES SUPREME COURT.

ADELAIDE SNYDER, *et al.*,

vs.

THEODORE SICKLES, *et al.*

No. 83.

P. PHILLIPS,
for Defendant in Error.

R. O. Polkinhorn, Printer.

UNITED STATES SUPREME COURT.

ADELAIDE SNYDER, *et al.*,
vs.
THEODORE SICKLES, *et al.*

No. 83.

Brief of P. PHILLIPS, for Defendants in Error.

The plaintiffs in error sue for the possession of certain premises situated in the township of St. Louis.

The case was heard in the Circuit Court before Mr. Justice MILLER, and there was a verdict and judgment for defendants.

The record sets forth the title of the plaintiffs as originating in a concession by Cruzat to Angelica Chuvain on 12 May, 1785, of "forty arpents of land in front, by forty in depth, lengthwise the river called Des Peres from north to south bounded on one side by the lands of Louis Robert, on the other by the King's domain."

The claim was presented to the register and recorder for District of Louisiana, 27 February, 1806, by Perry the assignee.

Penrose and Donaldson, commissioners, rejected the claim on 23 August, 1806, as it appeared from the records in their possession that this concession had been revoked and a new one for same premises granted to Charles Tazon. p. 9

On 20 August, 1811, Penrose and Bates, commissioners, decide that Perry, as assignee aforesaid, was entitled to a patent under provisions of the 4 Section of the act 3 March, 1807, for 1,600 arpents on "river Des Peres, and order *the same to be surveyed* conformably to the possession, by virtue of a concession or order of survey from Francis Cruzat, Lieutenant-Governor. p. 10.

It appears from a letter of the Secretary of Interior, 18 March, 1865, that a survey had been made of this claim but this was rejected, as the survey covered the land which had been previously granted to Madam Pappin. "It was however, says the Secretary, deemed proper to authorize, on the demand of the plaintiffs, another survey to be made under the act 2 June, 1862. p. 16.

At request of claimants, Cozens was designated as surveyor, who made a return of his survey, No. 1201, 10 April, 1865.

On 11 May, 1865, the Secretary rejected this survey, as on "examination it was found it did not conform to the calls of the grant required by the order of survey."

He says further: "Upon examination of the map, it is seen that a survey could be made to conform reasonably with the proper calls, both as to the river, Robert's tract, and distance from the city of St. Louis.

The survey being on land not granted no effect will be given to it by the Department." p. 22.

Nevertheless, on the trial the plaintiffs offered this survey in evidence, together with a survey made by one Solomon, in 1874, by order of the St. Louis Circuit Court in a case pending between parties strangers to the parties in this cause, and offered to prove by parol that these surveys were identical, and correctly located the claim.

The possession of defendants, it was admitted, was under a patent issued to Joseph Generaux, 11 April, 1828, on a New Madrid location made in 1818. p. 7.

The court rejected the evidence offered by the plaintiff, and instructed the jury that the plaintiffs were not entitled to recover upon the evidence given, and thereupon the plaintiffs excepted to said charge. p. 23.

We have thus presented in an action to try title to land—a contest between an undefined and unsurveyed concession on one side, and a patent on the other—under which the possession is held.

The plaintiffs concession in 1785 was but inchoate; it required the confirmation of this Government and a location by an approved survey.

In *Stoddard* vs. *Chambers* the conflict was, as it is here, between a concession and a patent on a New Madrid location; the decision was made in favor of the concession. But there is this marked difference. Bell's concession had been surveyed by Soulard, and his claim was confirmed according to the survey.

Again, Peltier's location of the New Madrid certificate was made in 1816, and at this time lands claimed under French or Spanish titles were reserved from sale, and this continued until 1836, when the final confirmation of Bell's title was made.

When Peltier's claim was entered, surveyed, and patented, the land covered by it was not a part of the public domain authorized to be sold.

On this state of facts it necessarily followed that the title acquired by Peltier was against law and therefore void.

2 Howard, 313.

The question again arose in *Barry* vs. *Gamble*, where the New Madrid location was made in 1818 and the patent issued thereon in 1827. The opposing title was that of Mackay, who had a concession and order of survey for 800 arpents on the river Des Peres, in September, 1799. This claim was not filed as required by the acts of 1805–6–7. But in 1829, under the provisions of the act of 1824, he filed his claim in the District Court for Missouri, where he had a decree in his favor, which was confirmed in this court, and thereupon a patent was issued to him.

In opposition to this title the defendant relied on the New Madrid location made in 1818 and a patent in 1827.

As to the United States, and all claiming under them, Mackay's claim stood barred until the act of 1824, and this bar was removed so far as the *Government was concerned*. The time for filing claims under this act was extended by the acts of 1826 and 1828 to May, 1829, when the claim was filed.

But these acts only provided for the relinquishment of the rights of the Government, preserving in full force the title either at law or in equity of adverse claimants.

As the proceedings in the District court were *ex parte*, Lafleur in 1824 had a good title in equity, protected by the above-cited acts conferring a title to the patent, and it was, accordingly, held he had the better title.

3 How., 51.

The same question was again presented in *Bissell* vs. *Penrose*, where the doctrine of *Stoddard* vs. *Chambers* was affirmed upon the ground that a survey had been made so as to give effect and operation to the reservation of the land from sale.

It is *only upon this ground*, say the court, that the case can be upheld. "These private surveys constitute a part of the evidence of the claim upon which the decisions of the commissioners are founded."

In the syllabus it is thus stated: "A concession having no defined boundaries and not surveyed cannot be considered as property under the treaty, and as such protected by the courts of justice without a sanction by the political power of the United States.

8 How., 330.

See *Carpentier* vs. *Montgomery*, 13 Wall., 480.

Again, it is said in *Maguire* vs. *Tyler*, in reference to these inchoate titles: "The judicial tribunals, in the ordinary administration of justice, have no jurisdiction to deal with them, either as to fixing bound-

aries by survey or for any other purpose, but that such titles, until the survey is made, attach to no lands; nor could a court of justice ascertain its boundaries, as that power was reserved to the Executive Department of the Federal Government."

8 Wall., 661.

And in the same case reported in 1 Black., 195. it is said: The surveys of these titles are within the jurisdiction of the land office, and the Secretary may set aside a survey and order another to be issued.

It would seem to be needless to multiply authorities, or to extend argument for the purpose of showing the correctness of the charge that the plaintiff was not entitled to recover on the evidence offered.

The title now in issue was before this court in 1855, in the case of *Stanford* vs. *Taylor*, 18 How., 411.

Stanford brought ejectment, claiming under the concession to Madame Chauvin. It will be remembered that by the concession as well as by the confirmation the premises were to be surveyed. This was done by order of the Surveyor General in 1834, and the land located west of Robert's tract, and on both sides of the River des Peres.

On the trial the defendant offered this official survey in evidence to show that he was not within its limits.

The plaintiff objected to this evidence and insisted—

First. That the land granted and confirmed adjoined Robert's tract to the east.

Second. That the location is so plainly apparent on the face of the concession as not to require any survey.

He also offered to prove that the possession of Perry the confirmee, was east of the tract of Robert and adjoining it and included the premises in controversy.

The court rejected the evidence, allowed the survey to be introduced by defendant and refused permission to show that it was improperly located.

Judgment was rendered for defendant, and on writ of error this was affirmed here, the court holding that the concession had no definite boundaries and that a "*public survey is required to attach the concession to any land.*

18 How., 411.

As we have stated, this decision was in 1855. Ten years thereafter the claimant applied to the department for another survey, which, on presentation, was disapproved as "not conforming to the calls of the grant required by the order of Secretary."

Ten years after this rejection of the survey this action was commenced, and it would seem to have required some boldness to present the cause, in the face of the decision made in 1855, that this concession was without boundaries and attached to no land until it was publicly surveyed.

Since writing the foregoing we have been presented with the brief of the plaintiff in error, in which the right to sustain his action on the evidence offered by him is placed on the acts of the 2 June, 1862, and 6 June, 1874.

In the former act (12 Stat., 410,) it is provided that all claims to land derived from any foreign Government, should be surveyed by the proper officers of State upon the application of the parties claiming. But these surveys were to be held as *prima facie* evidence of the true location.

It is then added "nor shall any such grant be deemed incomplete for the want of a survey, *when the land granted may be ascertained without a survey or patent.*"

The survey here spoken of is a public survey, such as had been uniformly required in reference to this class of titles by all the preceding acts.

The title in question is one whose boundaries could not be ascertained but by a survey.

Then as to the act of 1874, (18 Stat., 62.)

Its title is "An act obviating the necessity *of issuing patents* for certain land claims in the State of Missouri."

By the first section all the right, title, and interest of the United States in and to all the lands in the State of Missouri which have been confirmed by act of Congress or Board of Commissioners, "are granted, released, and relinquised in fee simple to the respective owners of the equitable titles thereto as fully as could be done by patents issued therefor according to law."

This act contains nothing in derogation of the act of 1862, which requires a public survey on such a title as this.

The scope of the act is to be found in its title. It

vested all the interest the United States had in the land in the owner of the equitable title; so that he could not be defeated by the defendant setting up an outstanding title in the United States.

It did not, however, cure any defect in the original title. If the title was void for want of identity before the act, it was not made good by it. All that was done was a mere relinquishment of the interest of the United States in and to the land.

But whatever may be the construction of this act when applied to an action where the defendant possesses no title, we insist it is incapable of impairing a title vested prior to its passage.

In this case, the premises sued for were located by a New Madrid certificate in 1818, for which a patent issued in 1828. Under this the possession has been held from that day to this.

It is impliedly admitted that up to 1874, the plaintiff had no standing in court.

As was said in *U. S.* vs. *King*, 3 How., 787, "Though the instrument contain clear words of grant, yet, if the description of boundary is vague and indefinite, and there is no official survey to give it a certain location, *it creates no right of private property ascertainable in a court of justice.*"

When the location and patent of the defendant were made, the lands thus entered were not reserved for the claim of the plaintiff, for his claim designated no land.

There was nothing therefore which could interfere with any disposition the Government might choose

to direct, nor was there any thing which could charge the defendant with an equity in favor of the claimant.

After forty-six years of quiet possession held by defendant under a patent from the United States, the claimant brings this action to recover the premises, and $3,000 for rents and profits by virtue of the act of 1874, which he avers authorizes him to submit to the determination of the jury what boundaries should be assigned to the concession made by Cruzat in 1785.

Can the defendant in any case be put to such hazard? Can he be deprived of the protection which an approved public survey gives?

We think the two acts themselves answer the question.

In addition, we call attention to the 2d section of the act of 1874, not adverted to in the brief of the plaintiff in error.

By this section it is provided, "That nothing contained in the first section of this act shall in any manner abridge, divest, impair, or prejudice, any valid right, title, or interest of any person in or to any portion or part of the lands mentioned in the first section of the act."

Now if it be admitted, that the plaintiff could not prior to this act have claimed a recovery upon such evidence as was proferred on the trial, but could do so subsequent to the act, then the title or interest of the defendant in the premises is prejudiced and impaired, and is within the protection of the 2nd section.

In any view to be taken of this act the judgment

in this case must be affirmed on the ground that when the location and patent of the defendant were made, there was no reservation of the land under the act of 1811 or any other act.

We again advert to the cases of *Stoddard* vs. *Chambers*, and *Bissell* vs. *Penrose*, in which the concessions were held to prevail over the New Madred Patents. In these the confirmations were *according to surveys* filed with the application for confirmation, and, though private surveys, they were held to have been virtually recognized by Congress.

These surveys "designated and located the grant so as to give effect to the act of 1811, reserving the premises from sale."

It is on upon this grouud, says NELSON, Justice, in *Bissell* vs. *Penrose*, that the case of *Stoddard* vs. *Chambers* can be upheld, otherwise the location of the New Madrid certificate would be the better title. To give effect to the act of 1811, the claim must designate the particular tract.

Again, he says, "our conclusion is that the private survey of the title of Vasquez filed with the records under the act of 1805, designated and located tha grant so as to give effect and operation to the act of 1811, reserving the premises from sale."

The plaintiff in his brief speaking of the act of 1874 says: "It was manifestly to meet the evils shown to have resulted from investing the executive department with the power of locating confirmations, that Senator Bogy presented the act of 1874, divesting it of that power, and made these confirmations

as complete titles as they could be made by patents, in order that the court might decide the question of location." Brief, 7.

On examining the proceedings of Congress, it will be seen that when Mr. Bogy presented the bill to the Senate, he stated that it was reported by the Committee on Private Land Claims unanimously, and had received the approbation of the Commissioners of the General Land Office.

He then said "that the only object of the bill was to do away with the necessity of issuing patents, and that the necessity of it grows out of a decision of the Supreme Court made recently, to the effect that our statute of limitations does not begin to run until the *patent issues*. That decision is not in accordance with the legal opinion of the bar of our State for the last forty years, and patents in very few cases have been issued, we deeming that the confirmation was sufficient, and had passed the entire title of the United States. Under the decision of the Supreme Court, as long as the nominal title remains in the Government, the limitation provided by the law of the State does not begin to run. The consequence is that a very wide field of litigation is thereby opened. *The object of the bill is to close that field of litigation.*"

(Cong. Rec., vol. 2, part 4, p. 3081, 43d Congress, 1st session.)

It is thus seen that the object of the promoter of this bill was not such as is stated in the brief referred to.

P. PHILLIPS,
for Defendant in Error.